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An attempt by the local legislature of the city of Chicago to interfere with the business of department stores has been condemned by the Supreme Court of Illinois. The municipal council passed an ordinance providing that certain kinds of provisions and vegetables should not be sold or exposed for sale by any firm or corporation in a building where dry goods, clothing, jewelry or drugs were sold, and another forbidding the sale of malt or fermented liquors in such a place. The court recently held both the ordinances void, ruling in the first place that the city was only empowered to make such regulations concerning the sale of provisions as might be necessary for the preservation of health or the prevention of disease, and in the second place that the ordinance complained of involved a purely arbitrary restriction not having any connection with and not tending in any way toward the protection of the public against the evils arising from the sale of intoxicating liquors. In a general way both ordinances were condemned as interfering unwarrantably with the right of the citizen to acquire and use property. The opinion has just been handed down, and we have not at hand the full text of it. The court is reported to have declared that the ordinances "are an attempted interference by the city with the rights guaranteed to the defendant by the Constitution of the United States and of the State of Illinois," and that "when an owner is deprived of the right to expose for sale and sell his property he is deprived of property within the meaning of the constitution, by taking away one of the incidents of ownership." It is further declared to be plain that the ordinance is "a mere attempt to deny a property right to a particular class in the community where all other members of the community are left to enjoy it. It is immaterial whether such a denial is in a statute or in an ordinance passed by virtue of a statute. It is equally invalid in either case." The conclusion of the court is undoubtedly sound and will have the effect to discourage efforts on the part of city authorities to regulate department stores in the arbitrary manner attempted by ordinances of this character.

Browning v. Van Rensselaer, recently decided by the United States Circuit Court, Eastern District of Pennsylvania, is a novel and interesting application of the law of libel. It was held in substance that to say of a book purporting to show what American citizens are descended from royalty, that it gives no authority for its statements, and that in almost all cases the descendants are proved to be illegitimate, is not libel; the first being within the ordinary scope of literary criticism, and as to the second, it being admitted that "some" descents are traced through illegitimates.

The plaintiff averred that he is an expert on matters of genealogy, and the author of many publications on this subject, among them a book entitled, "Americans of Royal Descent," which was first published in 1883, and is now in its fourth edition. The language complained of is contained in a letter written to the defendant by a Miss Farnsworth, who appears to have been interested in establishing in America a society to be called the "Order of the Crown." To this society only persons of royal descent were to be admitted, and its portals were to be guarded by Mr. Browning's book. "Americans of Royal Descent" was to furnish the evidence by which the lineage of aspirants was to be judged. In the letter Mrs. Van Rensselaer declined an invitation to become a member of this somewhat bizarre association, and gave these sensible reasons for declining:

Firstly. I think the title of this society disrespectful to our ancestors who fought in the war of independence to free this country from a crown, and also think it un-American and unpatriotic.

Secondly. If the aim of this society is purely social, I cannot agree with you that royal descent will insure distinguished social position in this country.

Another reason was this:

Thirdly. As I understand this matter, Mr. Browning's book called "Americans of Royal Descent," is to be the standard of admission to the society. This work quotes

no authority for the statements it contains, but gives lists of people that Mr. Browning declares are descended from monarchs of the Middle Ages, and in almost all cases the descendants are proved to be illegitimate. If I have any such blot on my escutcheon, time has drawn the merciful veil of oblivion over it, and it would be folly for me to be the one to point it out and emphasize it. The only insignia that you could adopt for your society would be the "Bar Sinister," and that is hardly one to be proud of.

This paragraph is said to be false and libelous in two particulars; First, because it declares that "this work gives no authorities for the statements it contains;" and second, because it declares that "in almost all cases the descendants are proved to be illegitimate." In the opinion of the court, however, neither declaration is legally objectionable for the reason before stated. There is no personal reflection, says the court, upon an author in declaring, even untruly, that he has cited no authority for his statements. It is a matter of common observation that historical writers often give the result of their studies without referring to the sources on which they rely; and even if, in a given case, it were untrue to say that such sources were not specifically referred to, this would not of itself be an attack upon the personal character of the author.

NOTES OF IMPORTANT DECISIONS.

CONSTITUTIONAL LAW—SPECIAL JURY LAW.—A recent decision of the Supreme Court of the United States in Brown v. State of New Jersey, holds that a statute of that State providing for struck juries in criminal cases was not void as being contrary to the federal constitution. According to the provisions of such statute, the court may select from the persons qualified to serve as jurors ninety-six names from which the prosecutor and defendant may each strike twenty-four, and the remainder shall be put in the jury box, out of which the trial jury shall be drawn in the usual way. It was further enacted that an accused person shall have only five peremptory challenges in a case where a struck jury has been ordered, while twenty peremptory challenges are allowed in a trial before an ordinary jury. It was held that such distinctions did not violate due process of law or amount to a denial of the equal protection of the laws. The following is from the opinion of the court by Mr. Justice Brewer:

"In providing for a trial by a struck jury, impaneled in accordance with the provisions of the New Jersey statute, no fundamental right of the defendant is trespassed upon. The manner of selection is one calculated to secure an impartial jury, and the purpose of criminal procedure is not to enable the defendant to select jurors, but to secure an impartial jury. 'The accused cannot complain if he is still tried by an impartial jury. He can demand nothing more. Northern P. R. R. v. Herbert, 116 U. S. 642, 29 L. Ed. 755, 6 Sup. Ct. Rep. 590. The right to challenge is the right to reject, not to select, a juror. If from those who remain an impartial jury is obtained, the constitutional right of the accused is maintained.' Hayes v. Missouri, 120 U. S. 68, 71, 30 L. Ed. 578, 580, 7 Sup. Ct. Rep. 350.

"Due process and equal protection of the laws are guaranteed by the fourteenth amendment, and this amendment operates to restrict the powers of the State, and if trial by a struck jury conflicts with either of these specific provisions it cannot be sustained. A perfectly satisfactory definition of due process may perhaps not be easily stated. In Hurtado v. California, *supra*, p. 537, L. Ed. 239, Sup. Ct. Rep. 121, Mr. Justice Matthews, after reviewing previous declarations, said: 'It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law.' In Leeper v. Texas, 139 U. S. 462, 468, 35 L. Ed. 225, 227, 11 Sup. Ct. Rep. 577, Chief Justice Fuller declared 'that law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the constitutional requirement is satisfied.' Within any and all definitions, trial by a struck jury in the manner prescribed must, when authorized by a statute valid under the constitution of the State, be adjudged due process. A struck jury was not unknown to the common law, though, as urged by counsel for plaintiff in error, it may never have been resorted to in trials for murder. But if appropriate for and used in criminal trials for certain offenses, it could hardly be deemed essentially bad when applied to other offenses.' It gives the defendant a reasonable opportunity to ascertain the qualifications of proposed jurors, and to protect himself against any supposed prejudices in the mind of any particular individual called as a juror. Whether better or no than any other method, it is certainly a fair and reasonable way of securing an impartial jury, was provided for by the laws of the State, and that is all that due process in this respect requires.

"It is said that the equal protection of the laws was denied because the defendant was not given the same number of peremptory challenges that he would have had in a trial before an ordinary

jury. In the latter case he would have been entitled under the statute to twenty peremptory challenges, but when a struck jury is ordered he is given only five. But that a State may make different arrangements for trials under different circumstances of even the same class of offenses, has been already settled by this court. Thus, in Missouri v. Lewis, 101 U. S. 22, in certain parts of the State an appeal was given from a final judgment of a trial court to the supreme court of the State, while in other parts this was denied; and it was held that a State might establish one system of law in one portion of its territory and a different system in another, and that in so doing there was no violation of the fourteenth amendment. So, in Hayes v. Missouri, *supra*, it appeared that a certain number of peremptory challenges was allowed in cities of over 100,000 inhabitants, while a less number was permitted in other portions of the State. It was held that that was no denial of the equal protection of the laws, the court saying (page 71, L. Ed. 580, Sup. Ct. Rep. 352): 'The fourteenth amendment to the constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.' "

PRINCIPAL AND AGENT—ENDORSEMENT OF FORGED CHECK BY AGENT—LIABILITY OF PRINCIPAL.—In Warren-Scharf Asphalt Pav. Co. v. Commercial Nat. Bank of Detroit, 97 Fed. Rep. 181, decided by the United States Circuit Court of Appeals, Sixth Circuit, it was held that an agent of a corporation, duly authorized to indorse checks in its behalf for deposit, may bind it by such an indorsement to the payment of a check purporting to have been drawn by the corporation to its own order, although such check was in fact forged by the agent himself. It was further held that the liability of a payee who by himself or an authorized agent indorses and deposits in a bank for credit a forged check is not the usual contingent liability of an indorser, but that of a warrantor of the genuineness of the paper; and it is absolute, requiring neither demand nor notice.

It appeared that a paving company having its principal place of business in New York opened an account with a bank in Detroit, and transmitted to the bank a power of attorney authorizing the company's local agent in Detroit to indorse and sign checks and deposit money in its name and for its use. From time to time the agent indorsed and deposited checks drawn by the company to its own order on its New York bank, which were credited to its account as cash. The agent forged such a check, indorsed and deposited it in the usual manner, checked out the proceeds, and absconded. It was held that the bank was not bound to know the company's New York signature, and that, in the absence of circumstances amounting to notice that the signature was a forgery, the company was liable to it on the indorsement for the amount of the check. The court said in part:

"But it is said that the authority to England (the agent) did not authorize him to overcheck, and that, until the check deposited had been actually collected, there was no authority to pay the $10,000 check presented on the same day. The forged check was the apparent check of a responsible customer upon another bank. According to the well-recognized course of banking business, this check was accepted as a cash deposit. Morse, Banks, secs. 569, 570. The receiving teller testifies that in the acceptance of this check, and crediting it at once to the account of the paving company, there was nothing out of the ordinary course of banking business. This evidence is not contradicted or questioned. The bank was under no obligation to credit a check thus deposited as cash, but it was clearly guilty of no negligent or unusual conduct in doing so. When received and credited as cash the account was subject to check, and the bank had no right to refuse to pay checks against the account thus swollen. Armstrong v. Bank, 133 U. S. 433, 466, 10 Sup. Ct. Rep. 450. The check subsequently paid was in no true sense an overdraft, and the bank became the *bona fide* holder of the forged check for value so soon as checks were drawn and paid by reason of the credit thus obtained.

"It is next urged that the check drawn and paid to England on August 7th was not a check drawn in the name of the paving company. The authority of England was to 'indorse and sign checks;' 'all checks drawn against or indorsed for deposit to said account by the said England to be in the name of this company.' It is said that the $10,000 check paid to England was signed only in the name of 'C. R. England, Attorney and Cashier.' This is a misreading of the instrument. The name of the 'Warren-Scharf Asphalt Paving Company' appears on the face of the check above the signature of England. It is true that the name of the company appears above the words 'pay to the order of cash.' This check was in the form of all previous checks drawn against this account. The name of the paving company is engraved or printed on the check, and was taken from the check book furnished England by the company. It is likewise the form in which the company's name was signed upon checks drawn at its principal office against its New York account. The objection is not well taken.

"It is next said that England's authority was limited to signing checks 'for the use of' the company, and that this check was drawn payable to 'cash' and was presented for payment by England himself, and that a check thus drawn and paid was equivalent to a check payable to the order of England, and was, therefore, not *prima facie* a check drawn for the 'use of' the company. The authority to sign checks for the use of the com-

pany imposed no affirmative duty upon the bank to inquire into the purposes of the check, or the use to which the money was to be put. If the bank paid this check in good faith, having no notice of England's fraudulent purposes, and not acting in collusion with him, it should be protected. England was acting within the apparent scope of his agency, and the bank was not bound to inquire into the use he intended to make of the proceeds of the check, it being drawn in usual form and in ordinary course of business. All, or nearly all, of the checks theretofore drawn against this account had been payable to 'cash,' and had been presented by and paid to England. It is true that most of them had been accompanied by a slip indicating the kind of money needed, which would possibly imply that the check was drawn for money needed to pay off employees. But there was no other indication than this memorandum made by England himself that the check had been drawn for the use of his company. In the absence of circumstances calculated to arouse suspicion that the check had been drawn for some fraudulent purpose, the bank was under no obligation to know that the drawer's own agent was going to misappropriate the proceeds. The mere fact that this accredited agent of the paving company had drawn this check payable to 'cash,' and that he presented it for payment himself, was not enough to put the bank upon inquiry as to the honesty of his purposes in the subsequent use of the money. The explanation given by England that the money would be needed for use in a neighboring city after bank hours, and for a transaction in which money alone would answer, was calculated to lead the bank to the conclusion that the check had been drawn and that the proceeds were to be used for the purposes of the paving company. The intimation that the transaction in which it was to be used was one of which no record was wanted carried no intimation that it was not a transaction for the benefit of the company, and justified no inquiry into its character. The inquiries made by the paying teller as to the terms of the letter of authority and as to the then state of the paving company's account were all proper precautions for the security of the bank. There was nothing in the colloquy between England and the bank's teller indicative that suspicion as to the honest purposes of England had been aroused, or upon which the bank should be charged with negligence or as exceeding its authority in respect to paying checks drawn by England. There was no evidence from which a jury might rightfully infer that the bank had notice that England was exceeding his authority or intended a misappropriation. The plaintiff in error intrusted England with the authority to indorse and sign checks in its name, and any loss arising from his dishonesty, when apparently acting within the scope of his known powers, should be borne by those who enabled him to perpetrate the fraud, rather than by one who has innocently suffered. There was no error in instructing the jury to find for the defendant in error, as there was no such conflict of evidence as would properly make an issue for the jury."

TRIAL—WITHDRAWAL OF JUROR—DISMISSAL—CONTINUANCE.—Two courts have recently considered the old common-law practice of withdrawing a juror for the purpose of producing a mistrial. The Supreme Court of Oregon, in Osborne v. Stephenson, 58 Pac. Rep. 1103, decides that the practice of withdrawing a juror in a civil case, on plaintiff's motion, on account of the absence of material testimony, does not prevail in that State, and that a juror will not be withdrawn, on plaintiff's motion, for the purpose of producing a mistrial and a continuance, unless the motion is based on matters occurring at the trial. The Supreme Court of Indiana, in Wabash R. R. Co. v. McCormick, 55 N. E. Rep. 251, decides that under statutes making complete provision for stopping a case by dismissal without prejudice, or continuance for cause shown, the withdrawal of a juror is superfluous, and gives plaintiff no additional rights. If no cause is shown for continuance, the withdrawal amounts to a nonsuit. In this case the court enters into an exhaustive historical review of the practice of withdrawing a juror.

RIGHTS AND REMEDIES OF MINORITY STOCKHOLDERS.

At the very inception of the corporation the courts laid down as a fundamental proposition the great parliamentary principle of majority rule. But despite the extreme jealousy with which some courts have clung to this principle, sometimes in the face of the plainest justice, wide breaches have been made, until the question has become of great importance, — what rights have minority stockholders, as such, to interfere in the corporate management in protection of their own interests and those of the corporation?

Classifications are extremely unreliable, especially when they presume to measure the boundless resources of a court of equity, but without setting down any arbitrary limits we would answer the question propounded after the following manner. Minority stockholders may interfere in the management of a corporation: First, when directors or majority stockholders attempt to disregard the contract of incorporation or commit acts that are not within the express or implied powers of the charter; Second, when directors or majority stockholders oppressively or fraudu-

lently violate the rights of the minority, although acting within the powers of the charter; Third, when directors or managers of a corporation have been guilty of gross negligence or inattention to the duties of their trust and injury has resulted thereby to the stockholders.

The act of incorporation contemplates a contract between the corporation and every stockholder to this effect, that the corporation will continue strictly within the lines laid down for it in the corporate charter. Any deviation from the business for which the company was established, or any abandonment of the original purpose agreed upon in the articles of association, gives the dissenting stockholder the right to interfere.[1] Where an unauthorized or illegal amendment has been accepted by the corporation, a dissenting stockholder may restrain by injunction or set aside any act done under the amendment.[2] Where directors attempt to sell all the corporate property of a prosperous going concern, such an act is *ultra vires*, and may be enjoined or set aside.[3] It had long been the rule at common law, that if such a sale amounted to a dissolution the minority had no cause for complaint; but the tendency is clearly the other way where the corporation is a prosperous going concern.[4] And it has been held by very recent authority that where the majority attempt to lease the property of a corporation to another corporation in consideration of a specified percentage of the proceeds to be paid by the latter, such act was *ultra vires*, and could be enjoined by a single non-assenting stockholder.[5] But even where by authority of statute the majority are permitted to sell, they cannot transfer the corporate property in exchange for stock in another corporation. Minority stockholders may insist on a public sale, unless otherwise regulated by statute.[6] The issue of preferred stock after the corporation has been organized with common stock only is also a breach of the corporate contract which a single stockholder may prevent;[7] and where stock is issued gratuitously, or as fully paid up, a dissenting stockholder can have the issue recalled and canceled on the ground of *ultra vires*.[8] Outside of these cases, however, there is a great class of *ultra vires* acts that are the subject of constant litigation arising whenever a corporation undertakes to carry on a business, or attempts to extend its enterprise into fields not warranted by its charter. The right of a single stockholder to object and to say, authoritatively, "stop," cannot be questioned, and is firmly established. The cases are numerous, and it would not serve the present purpose of this thesis to enter into any exhaustive analysis of them. It is, of course, difficult at times to determine whether a particular act is *ultra vires* or not, but that fact once established the right and remedy of the dissenting minority is clear, and the court has no discretion in the matter.[9] In cases of fraud, however, the remedy of the minority is more difficult of attainment. An act may be *ultra vires*, in which case the courts will not consider whether the act is fraudulent or not, or whether it is beneficial or not, but at the instance of one dissatisfied member of the corporation who applies seasonably is bound to enjoin or set it aside. But the acts complained of may be *intra vires*, acts which have the cloak of regularity and authority. For such acts there is ordinarily no remedy but the corporate elections, unless there are elements of fraud or oppression on the part of the directors or majority stockholders. In such cases equity holds out a remedy if damage is proved and the act clearly shown to be fraudulent.

There is a tendency, however, in cases of this nature, to lighten the burden of proof in favor of injured stockholders by establishing between them and the corporation the relation of trustee and *cestui que trust*. This trust relation is now gener-

[1] Kean v. Johnson, 9 N. J. Eq. 401; Central R. R. Co. v. Collins, 40 Ga. 582.

[2] Zabriskie v. Hackensack, 18 N. J. Eq. 178.

[3] Abbot v. Hard Rubber Co., 33 Barb. 578.

[4] Forrester v. Mining Co. (1898), 21 Mont. 544; Boston Railroad v. The Railroad, 13 R. I. 260; People v. Ballard, 134 N. Y. 269; Small v. Matrix Co., 45 Minn. 264; Astor v. Gas Light Co., 33 Hun, 333; Stevens v. Railroad, 29 Vt. 545; Elyton Land Co. v. Dowdell, 113 Ala. 177.

[5] Small v. Matrix Co., 40 Minn. 264; Mills v. Railroad, 41 N. J. Eq. 1.

[6] Mason v. Mining Co., 133 U. S. 50; Elyton Land Co. v. Dowdell, 113 Ala. 177.

[7] Kent v. Mining Co., 78 N. Y. 159; Campbell v. American Co., 122 N. Y. 455.

[8] Gilman R. R. v. Kelly, 77 Ill. 426; Dewing v. Perdicaris, 96 U. S. 193.

[9] Cherokee Iron Co. v. Jones, 52 Ga. 276; Dupont v. Railway, 18 Fed. Rep. 467; Colles v. Iron City Co., 11 Hun, 397; Manderson v. Bank, 28 Pa. St. 379; Pearsall v. Railroad, 73 Fed. Rep. 467.

ally recognized by the great weight of authority, and contracts between directors and the corporation are by most authorities held to be constructively fraudulent; but, strangely enough, by possibly the majority of these cases,[10] only the corporation and majority stockholders can take advantage of such contracts, unless tainted with actual fraud, when, of course, no majority, however large, can ratify. Still, this recognition of the trust relation existing between a corporation and its stockholders has been useful in facilitating the detection of fraud and branding many acts as such, which, under the strict rules of law, would not be so considered. Moreover, the tendency is very strong in the best considered cases to carry out the trust relation to its logical conclusion, and to put the ban of disapproval on all contracts made by directors with one of their own number, whether fair or not, and hold them to be, if not necessarily void, at least voidable, at the option of the corporation or dissenting stockholders.[11]

It would be impossible to point out the multitude of ingenious devices by which minority stockholders are defrauded out of their rights and property in the corporation. There is no field of activity in which fraud calls forth men of such keen intelligence to lay the foundation of its damnable trickery. But courts of equity are equal to the emergency, and stand ready to put into the hands of the injured stockholder all the means and agencies of their exhaustless resources to apprehend the guilty parties, and hold them to a strict accountability; and in a large number of cases in which frauds of this character have appeared, equity has given evidence of a most vigorous handling worthy of Lord Hardwicke himself.[12] In Du Puy v. Transportation Co., the court said: "A stockholder, though owning but a single share, may maintain an action in equity to investigate, strike down and strip of their covering, acts of the corporation which are tainted with fraud."

Where a corporation owned a leasehold, and one of the directors purchased the fee, and the board of directors, at the instigation of such director, allowed the lease to be forfeited for non-payment of rent, the company having funds sufficient to pay such rent, a minority stockholder may set aside the forfeiture.[13] Where directors took a mortgage to themselves to secure debts due to them from the corporation, and then foreclosed, a minority stockholder was permitted to come in as defendant and set up the defenses which the corporation ought to have set up, and defeated the foreclosure.[14] Where two stockholders, owning two-thirds of the stock in a private corporation, cause the directors to sell all the corporate property to a person who buys for them, the minority stockholders may cause the sale to be set aside, even though a stockholders' meeting has authorized it.[15] In several recent cases, it has been held that a corporation cannot acquire the majority of stock in another corporation, divert the income of its business, refuse certain other business which would have enabled it to pay its interest charges and avoid default on a mortgage held by them, and then institute an action in equity to enforce its defaulted obligations against such corporation with the avowed purpose of obtaining control of its property at less than its value, to the injury of the minority stockholders.[16]

In Ervin v. Navigation Co., A and B, majority stockholders in a certain corporation, having incorporated another company for the same purposes, proceeded to dissolve the old company and sell its property to the new corporation. The old company was capitalized at $5,000,000, and its financial condition was healthy and prosperous. Ap-

[10] Ten Eyck v. Railroad, 74 Mich. 226, and authorities cited.

[11] Port v. Russell, 36 Ind. 60; Munson v. Railroad, 103 N. Y. 73; European R. R. v. Poor, 59 Me. 277; Wardell v. Railroad, 103 U. S. 651; Aberdeen v. Blackie, 1 Macq. 461; Bird Coal Co. v. Humes, 157 Pa. St. 278; Metropolitan v. Manhattan R. R., 14 Abb. N. Cas. 103; Coal Co. v. Sherman, 30 Barb. 553; Bent v. Priest, 86 Mo. 475; Farmers' Bank v. Downey, 53 Cal. 466; Parker v. Nickerson, 112 Mass. 195.

[12] Ervin v. Navigation Co., 27 Fed. Rep. 625; Farmers' Loan & Trust Co. v. Railroad, 150 N. Y. 410; Grant v. Lowe, 89 Fed. Rep. 881; Du Puy v. Transportation Co., 82 Md. 408; Hannerty v. Standard Theater Co., 109 Mo. 297; Chicago Hansom Co. v. Yerkes, 141 Ill. 320; Morris v. Griffith Co., 69 Fed. Rep. 131; Flynn v. Brooklyn City R. R., 53 N. E. Rep. 520; Pearsall v. Great Northern R. R., 73 Fed. Rep. 933; Barr v. Railroad, 96 N. Y. 444; Mason v. Harris, L. R. 11 Ch. D. 97; Sellers v. Iron Co., 13 Fed. Rep. 20.

[13] Hannerty v. Standard Theater Co., 109 Mo. 297.

[14] Koehler v. Black River Falls Co., 2 Black, 715; Wright v. Oroville Co., 40 Cal. 20.

[15] Chicago Hansom Co. v. Yerkes, 141 Ill. 320.

[16] Farmers' Loan & Trust Co. v. Railroad, 150 N. Y. 410; De Neufville v. Railroad, 81 Fed. Rep. 10.

praisers selected by the two companies, which, of course, were the nominees of the two conspirators themselves, fixed the selling price at $2,300,000, and stockholders were notified to exchange their certificates of stock, quoted above par, for cash, at 46 cents on the dollar! The audacity and cleverness of this scheme excites our admiration, but the court was evidently indignant. "Plainly," the court said, "the defendants have assumed to exercise a power belonging to the majority in order to secure personal profit for themselves without regard to the interests of the minority. They repudiate the suggestion of fraud and plant themselves upon their right as a majority to control the corporate interests according to their discretion. They err if they suppose that a court of equity will tolerate a discretion which does not consult the interests of the minority."

In the cases just referred to, and in the great majority of cases of this character, the remedy given the minority stockholder is by injunction against the majority restraining them from consummating their fraud, or compelling them to refund to the corporations the proceeds and profits of their illegal transactions. But can a court of equity go further? Is a court of equity empowered to wind up a corporation, sequestrate its property and appoint a receiver at the instance of minority stockholders? As a general rule, independent of statutory authorization, courts of equity have no jurisdiction to apply this most efficient and disastrous remedy.[17] The courts, however, are beginning to fret a little under the restraint, impressed with the fact that conditions will sometimes arise for which the ordinary preventive remedies by injunction do not furnish a sufficient corrective of the abuses involved. A sterner remedy is required, one which will put it completely out of the way of a dishonest and incompetent management to misappropriate the investments of the minority. It should always be borne in mind, however, that the corporation was born out of the inadequacies of the partnership, and that one great defect of the partnership was the easy manner in which the relation could be dissolved at the instance of a single partner. In the reaction from this extreme the courts went to the other and laid down an absolute rule against any decree of dissolution of a corporation or sequestration of its property by a court of equity on the application of a single stockholder, leaving to the latter, in many cases, neither remedy nor way of escape. This was unfortunate, as undoubtedly cases do arise in which a dissolution should be decreed or a receiver appointed, and courts of equity have already undertaken to make some wholesome exceptions to the strict rule as it has formerly existed, and are evidencing less hesitancy in appointing a receiver or decreeing a dissolution when the circumstance of the case absolutely demand the application of such extreme remedies. Two notable instances of this departure are to be found in the cases of Miner v. Ice Company,[18] and Fougeray v. Cord.[19]

The case of Miner v. Ice Company is probably the strongest case on record in the interest of minority stockholders. The opinion of the court contains an exhaustive review of the authorities and goes far beyond them all in the thoroughness and completeness of the remedy applied. In this case a majority stockholder conceived the idea of controlling the management and appropriating all the profits of a large corporation to himself by electing himself and two of his "dummies" as directors, causing the board to vote a large salary to himself as president and manager, and leasing to the company property of his own at an exorbitant rental. This resulted in the absorption of the entire profits of the corporation and was continued for nearly seven years, during all of which time, although the company's business was large and lucrative, no dividend was ever declared, the complete returns from the whole investment being swallowed up by the majority stockholder. The court, on application of the minority stockholder, went to the full extent of its equitable powers, compelled the officers to account for all the profits of the business, wound up the corporation, appointed a receiver, and then proceeded to lay down this most advanced doctrine: "The general rule undoubtedly is, that courts of equity have no power to wind

[17] French Bank Case, 53 Cal. 495; Waterbury v. Express Co., 50 Barb. 157; French v. Gifford, 30 Iowa, 153; Verplanck v. Insurance Co., 1 Edw. Ch. 87; Attorney General v. Earl of Clarendon, 17 Ves. 491; Davis v. Flagstaff, 2 Utah, 74; Fountain v. Turnpike Co., 8 B. Mon. 142.

[18] 93 Mich. 97.

[19] 50 N. J. Eq. 185.

up a corporation in the absence of statutory authority. The rule is, however, subject to qualifications. The present case furnishes an instance of gross breach of trust. Is a court of equity powerless to give an adequate remedy? Must the *cestui que trust* be committed to the domination of a trustee who has for seven years continued to violate the trust? The law requires of the majority the utmost good faith in the control and management of the corporation as to the minority. The trustee has so far absorbed all returns. What is the outlook for the future? This court in view of the past can give no assurances. It can make no order that can prevent some other method of bleeding this corporation, if it is allowed to continue. Complainant has a right to insist that it shall not continue as a cloak for a fraud upon him, and shall no longer retain his capital to be used for the sole advantage of the owner of the majority of the stock; and a court of equity will not so far tolerate such a manifest violation of the rules of natural justice as to deny him the relief to which his situation entitles him. I think a court of equity, under the circumstances of this case, in the exercise of its general equity jurisdiction, has the power to grant this plaintiff ample relief, even to the dissolution of the trust relations. A receiver will be appointed and the affairs of this corporation wound up." This case is receiving the support of many of the latest authorities,[20] and is indicative of the growing tendency on the part of courts and legislatures to clothe equity tribunals with visitorial powers over corporations whenever the exigencies of the case so demand. In many of the cases just cited, however, the courts are still unwilling to go to the extent of decreeing a dissolution, being content with the appointment of a temporary receiver and compelling an accounting from the guilty parties.

And so cases might be cited *ad infinitem* showing to what great length equity can unloosen itself to baffle the cutest and most audacious schemes devised by cunning intellects to subvert the interests of minority stockholders. No unbending rules of law bind the arm of the chancellor from grappling with the most innocent and treacherous of these attempts. He goes promptly to the root of the whole difficulty, finds justice to be on one side or the other, and applies the most immediate and effectual remedy.[21]

In conclusion,—how far are directors in control of a corporation liable to stockholders for gross negligence and inattention to the duties of their trust. It would seem that there is a distinction to be made between the stockholder's action against directors on their personal liability for acts of negligence or mismanagement, and his action to enjoin or set aside such acts. In the first case there seems to be a tendency on the part of some courts to excuse directors and treat them with a liberal indulgence where they have not profited by their unfortunate transactions, while in the latter case the fact that some third party will profit by such negligence or mismanagement serves to incline the courts strongly in favor of the innocent stockholder who seeks in due time to prevent the act or to set it aside in favor of the corporation. It must be borne in mind, however, that in no case will the court lightly review the action of the directors. The directors have been placed at the head of the enterprise by the stockholders themselves and courts will discourage anything which looks like vexatious interference in the management on the part of disgruntled stockholders.[22] In such cases the only remedy of a dissenting minority is through the corporate elections. Having once put forth their representatives to manage their interests, they will not be permitted to clog the wheels of commercial intercourse by their constant interference. But further than this the rule should not be carried. The case of Dodge v. Woolsey, undoubtedly the leading authority on this subject, has firmly established the doctrine that when the negligence or mismanagement of directors amounts to a gross breach of trust, equity will permit a dissent-

[20] Fougeray v. Cord, 50 N. J. Eq. 185; Davis v. Light Co., 77 Md. 35; Aiken v. Irrigation Co., 72 Fed. Rep. 591; Wayne Pike Co. v. Hammons, 129 Ind. 368; Becker v. Street Railway, 80 Tex. 475; Order of Iron Hall v. Baker, 134 Ind. 293; Haywood v. Lumber Co., 64 Wis. 472; St. Louis Coal Co. v. Edwards, 103 Ill. 472.

[21] Sage v. Culver, 147 N. Y. 241; Wright v. Oroville Co., 40 Cal. 20; Meeker v. Iron Co., 17 Fed. Rep. 48; Gamble v. Water Co., 123 N. Y. 91; Rogers v. Agricultural Works, 52 Ind. 297; Wildes v. Homestead Co., 53 N. J. Eq. 425.

[22] Foss v. Harbottle, 2 Hare, 461; MacDougall v. Gardiner, 1 Ch. Div. 13; Brewer v. Boston Theater, 104 Mass. 378; Hawes v. Oakland, 104 U. S. 450

ing stockholder to take up the cause of the corporation and institute or defend suits in its favor.[23] The court in the late case of Wildes v. Rural Homestead Co.,[24] expressed the general rule satisfactorily: "A transaction of the directors of a corporation, which, though lawful in itself and *intra vires*, is conspicuously unwise and injurious to the corporation and its stockholders, will be set aside in equity in an action by individual stockholders."

The personal liability of directors to stockholders for negligence or mismanagement is very unsettled, and the cases are almost irreconcilable, some cases having gone so far as to exempt directors from liability in such cases altogether. Such was the decision in the case of Briggs v. Spaulding,[25] which, in our opinion, is wholly indefensible. Four judges vigorously dissented. In this case the directors of a bank held a meeting, elected officers for the ensuing year, adjourned, and never went near the bank again; by reason of which the officers of the bank were enabled to commit a systematic embezzlement of the corporate funds. The position taken by the court was that directors should not be held accountable for mere errors of judgment. Very true. But suppose they entirely neglect to exercise their judgment whatever. Surely, when directors presume to accept such a position of trust and responsibility they at least impliedly promise to give to the corporation and the interests of the stockholders a reasonable amount of time, attention and ordinary business judgment; otherwise the interests of stockholders would be constantly in jeopardy. If directors cannot see their way clear to fulfill their duty up to this most reasonable limit, they should promptly decline to serve, and a little wholesome restriction on the part of the courts would soon bring about a most desirable reform in the directories of many of our large corporations. They should be given to understand that they cannot give the influence and credit of their names to the management of a corporation and thus encourage investors into the belief that the affairs of the company are in safe and competent hands, and then turn round and completely forget that any such corporation ever existed. "Upon this theory," says Justice Harlan, in his splendid dissenting opinion in the case of Briggs v. Spaulding, "directors have only to meet, take the required oath to administer its business diligently and never go near the bank again. Such a system cannot be properly characterized otherwise than as a farce. It cannot be tolerated without peril to the business interests of the country." We are satisfied that the great weight o authority is opposed to the decision in the case of Briggs v. Spaulding, and, furthermore, that even those cases which deny the right in any one but the corporation to sue directors for acts of gross negligence are not in accord with the latest authorities.[26]

In the case of Brinckerhoff v. Bostwick the complaint charged the directors with having neglected to perform their official duties as such directors, and negligently permitting the money, property and effects of the corporation to be stolen, wasted and squandered; that plaintiff was the holder of sixteen shares and by reason of such mismanagement had sustained damage to the amount of $3,200.00 or double the par value of his stock, by reason of his liability to creditors to that amount. The court allowed the complaint and held that, if through gross negligence and inattention to the duties of their trust, directors of a corporation suffer the corporate funds to be lost or wasted, they are liable to stockholders for the loss sustained. Continuing, the court said: "The action to recover such losses should in general be brought in the name of the corporation, but if it refuses to prosecute, the stockholders who are the real parties in interest will be permitted to sue in their own names, making the corporation a defendant. And that course of proceeding will also be allowed if it appears that the corporation is under the control of those who must be made defendants."

A very elaborate opinion on this point is to be found in the case of Bank v. Bossieux.[27] In that case Judge Hughes said: "It will abundantly appear from the authorities that the

[23] Dodge v. Woolsey, 18 How. (U. S.) 331; Knoop v. Bohmrich, 23 Atl. Rep. 118; Wildes v. Rural Homestead Co., 53 N. J. Eq. 425.

[24] Wildes v. Rural Homestead Co., 53 N. J. Eq. 425.

[25] 141 U. S. 132.

[26] Brinckerhoff v. Bostwick, 88 N. Y. 52; Robinson v. Smith, 3 Paige, 222; Soloman v. Bates, 118 N. Car. 316; Marshall v. Bank, 85 Va. 676; Horn Mining Co. v. Ryan, 42 Minn. 196.

[27] Bank v. Bossieux, 4 Hughes, 398.

managing officers of a corporation are personally liable for the results of gross negligence. If by reckless inattention to the duties confided to them by the corporation, frauds and misconduct are perpetrated by officers or agents which ordinary care on their part would have prevented, then I think it may be said with truth that it is now elementary law that directors are personally liable for the losses resulting." It is very evident from a close examination of the authorities that some courts have manifested a remarkable amount of sympathy for corporate directors. In most cases this prepossession has been fair and reasonable,[28] but in some of the later cases their undue eagerness to screen directors from a just liability has lessened the confidence of the investing public in the management of corporate enterprises. And this is especially unfortunate in this day of huge combinations where the opportunities for dishonest gains and manipulations are so abundant and so wonderfully remunerative unless the corporation and its officers are kept under the closest scrutiny of a court of equity, and the interests of stockholders carefully guarded. The moment that equity disclaims any such anxiety or watchfulness and recedes one iota from the rule so vigorously laid down by Lord Hardwicke more than one hundred years ago in the celebrated English case of Charitable Corporation v. Sutton, the rights of minority stockholders will have been thrown into the greatest peril and the confidence of the investing public swept entirely away.

Such, briefly, is the *status* of minority stockholders at the present time. And while the gigantic aggregation of capital which is now seeking investment in vast corporate enterprises will undoubtedly serve to thicken the atmosphere and render more puzzling this already difficult subject, and although corporate wealth with its unlimited resources of power, commands, to-day, the keenest and most fertile intelligence, only to be too often misdirected in devising ways and means of circumventing the law, yet, notwithstanding, the outlook for the future is full of assurance that the rights of the investing public, and particularly of minority stockholders, will receive the promptest recognition by courts of equity, and that the remedies applied for their violation will be such as well afford the most complete and adequate relief.

ALEXANDER H. ROBBINS.

St. Louis, Mo.

[28] Spering's Appeal, 71 Pa. St. 24.

INFANTS — INSTALLMENT CONTRACTS — DISAFFIRMANCE — INSTALLMENTS PAID — RECOVERY.

RICE v. BUTLER.

Court of Appeals of New York, Nov. 21, 1899.

Where an infant who had purchased a bicycle on installments, and paid part of the price, under an agreement that title should not pass from the seller until all installments were paid, afterwards disaffirmed the contract, she was not entitled to recover the installments paid, since as to them the contract was executed, though the contract in its entirety was executory.

HAIGHT, J.: The appeal in this case is based upon the certificate of the [appellate division to the effect that questions of law are involved which ought to be reviewed by this court. The action was brought in the municipal court of Syracuse to recover the sum of $26.25, paid by the plaintiff, a minor 17 years of age, upon a contract for the purchase of a bicycle. The contract price was $45; $15 were paid upon the execution of the contract, and the remainder was to be paid in weekly installments of $1.25. The plaintiff purchased the wheel in June, and used it until about the 20th of September, and then returned it to the defendant, asserting that she had been defrauded, and demanded repayment of the amount that she had paid upon the contract. The defendant took the wheel, but refused to return the money, claiming that the use of the wheel, and its deterioration in value exceeded the sum paid. Upon the trial evidence was submitted on behalf of the defendant tending to show that the use of the wheel and its deterioration in value equalled or exceeded the amount that had been paid upon the contract. The trial court found in favor of the defendant, thus establishing the fact that there had been no fraud on the part of the defendant in making the contract.

It is now contended that the contract was executory, and that, being such, the plaintiff had the right to rescind, and recover back the amount paid. The appellate division appears to have taken this view of the case, and has reversed the judgment. The question thus presented may not be free from difficulty. There are numerous authorities bearing upon the question, but they are not in entire harmony. We have examined them with some care, but have found none in this court which appears to settle the question now presented. We, consequently, are left free to adopt such a rule as in our judgment will best promote justice and equity. The contract in this case in its entirety must be held to be executory; for,

under its terms, payments were to mature in the future, and the title was only to pass to the minor upon making all of the payments stipulated; but, in so far as the payments made were concerned, the contract was in a sense executed, for nothing further remained to be done with reference to those payments. Kent, in his Commentaries (volume 2, p. 240), says: "If an infant pays money on his contract, and enjoys the benefit of it, and then avoids it when he comes of age, he cannot recover back the consideration paid. On the other hand, if he avoids an executed contract when he comes of age, on the ground of infancy, he must restore the consideration which he had received. The privilege of infancy is to be used as a shield, and not as a sword. He cannot have the benefit of the contract on one side without returning the equivalent on the other." In the case of Gray v. Lessington, 2 Bosw. 257, a young lady during her minority had purchased a quantity of household furniture, paying about half of the purchase price, and had given her note for the balance. She subsequently rescinded the contract, and sought to recover the amount that she had paid. She had had the use of the furniture in the meantime, and it was held that she must account for its deterioration in value. Woodruff, J., in delivering the opinion of the court, says: "When it becomes necessary for an infant to go into a court of equity to cancel her obligations, or regain the pledge given for their performance, seeking equity, she must do equity. Making full satisfaction for the deterioration of the property, arising from its use, is doing no more. Presumptively, she has derived from the use of the property a profit or benefit equivalent to such deterioration." In the case of Medbury v. Watrous, 7 Hill, 110, an action was brought by an infant to recover for services performed, of the value of $70. The defense was that the work was done in part performance of a covenant to purchase of the defendant a house and lot for the sum of $600. He had not entered into the possession of the house and lot, and had received no benefits from the purchase. It was held that he could rescind the contract, and, having received nothing under it, he could recover upon a *quantum meruit* for the work performed. Beardsley, J., in delivering the opinion of the court, refers to the rule laid down by Chancellor Kent, and then to the case of Holmes v. Blogg, 8 Taunt. 508, and says, with reference to the latter case: "It was not shown what had been the value of the use of the premises demised while the infant remained in possession. If that was less than the sum paid by him, it may well be that he ought to have recovered the difference." It will thus be seen that the cases to which we have alluded recognize the principle which we think ought to be applied to this case, and that is that the plaintiff, having had the use of the bicycle during the time intervening between her purchase and its return, ought, in justice and in fairness, to account for its reasonable use or deterioration in value. Otherwise, she would be making use of the privilege of infancy as a sword, and not as a shield. In the absence of wanton injury to the property, the value of the use would be deemed to include the deterioration in value, and, under the evidence in this case and as found by the trial court, the use equalled the sum paid. Our attention has been called to the cases of Pyne v. Wood, 145 Mass. 558, 14 N. E. Rep. 775, and McCarthy v. Henderson, 138 Mass. 310; but we think the rule suggested by us is more equitable, and that they should not be followed. The judgment of the appellate division should be reversed, and that of the trial and county court affirmed, with costs. and the second, third and fourth questions certified to us answered in the affirmative. An answer of the first question is not deemed necessary, further than intimated in the opinion. All concur. Judgment reversed, etc.

NOTE.—*Recent Decisions on Contracts of Infants.*—Contracts made by minors, on legal consideration, are only voidable at the minor's instance; and a deed of a minor will authorize the grantee to maintain trespass to try title during the grantor's minority. Marlin v. Kosmyronski (Tex. Civ. App.), 27 S. W. Rep. 1012. An agreement by an infant with a railway company, in consideration of being allowed to travel on special terms, to waive all claims by himself, his executors, administrators, or relatives, for accident, injury, or loss to himself or his property on the railway, even if occasioned by negligence of the company's servants, and to indemnify the company against any such claim, held detrimental to the infant, and not binding on him. Flower v. London & N. W. Ry., 9 Reports, 494. Where a married woman, during her minority, executes a mortgage on land, she cannot affirm the mortgage after she attains her majority, and during her coverture, by an instrument not executed in the manner provided by statute for the conveyance of land by married women. Walton v. Gaines, 94 Tenn. 420, 29 S. W. Rep. 458. Where infants, after reaching their minority, with knowledge of the facts rendering a sale of their land voidable for fraud, receive the residue of the purchase price, they ratify the sale. Smith v. Gray (N. Car.), 21 S. E. Rep. 200. A promise of one, after attaining his majority, to pay a note made during infancy, "if possible," at a certain time, is not such a ratification as to prevent the defense of infancy, without showing that he was able to pay it at the time specified. Peacock v. Binder (N. J. Sup.), 31 Atl. Rep. 215. By bringing an action to recover the purchase money, an infant elects to rescind the contract under which it was paid. Stack v. Cavanaugh (N. H.), 30 Atl. Rep. 350. It is no defense to an action by an infant to recover money paid under a contract of sale that the vendors were ignorant of his infancy. Stack v. Cavanaugh (N. H.), 30 Atl. Rep. 350. An infant, during his minority, can neither disaffirm a conveyance by him of land, merely because of his infancy, nor recover possession of the land. Shipley v. Bunn (Mo. Sup.), 28 S. W. Rep. 754. Where a minor contracts for the lease of a room, and leaves after occupying it for part of the period covered by the lease, he cannot be compelled to pay for the remaining time. Gregory v. Lee, 64 Conn. 407, 30 Atl. Rep. 53. Where an infant

obtains insurance on his life in a solvent company, at the usual rates, for an amount commensurate with his estate, and without fraud or undue influence by the company, he cannot, on becoming of age, surrender the policy, and recover the premium paid so far as they only cover current risk assumed. Johnson v. Northwestern Mut. Life Ins. Co., 56 Minn. 365, 59 N. W. Rep. 992. A court of equity will not permit a defendant to plead infancy as a defense to an action on a loan, without returning the money. Pemberton Bldg. & Loan Assn. v. Adams (N. J. Ch.), 31 Atl. Rep. 280. Where a contract with an infant is free from fraud, and reasonable, except that the infant paid in excess of the value of what he received, he can only recover such excess, where he is unable to restore what he received. Johnson v. Northwestern Mut. Life Ins. Co., 56 Minn. 365, 59 N. W. Rep. 992. An infant may avoid his contract for the purchase of personal property, and recover money paid thereunder, by rescinding it and returning the property. Stack v. Cavanaugh (N. H.), 30 Atl. Rep. 350. Where a father as authorized by Civ. Code, sec. 211, has relinquished to his son the right to control him and to receive his earnings, a debt due the son for wages is under his control, within Civ. Code, sec. 33, prohibiting contracts by minors under 18 years of age relating to personalty unless it is under their "control." Taylor v. Hill (Cal.), 44 Pac. Rep. 336. Where an infant obtains a loan, giving mortgage security on land therefor, and part of it is used, as provided by the application for loan, to pay the purchase price for part of the land, on which such price was a lien or incumbrance, such land will be treated as part of the consideration received by her for her mortgage contract, and its retention by her after attaining majority is a ratification of the entire mortgage. American Freehold Land-Mortgage Co. v. Dykes (Ala.), 18 South. Rep. 292. An agreement by an infant to pay commissions for obtaining a loan, being separate from her contract with the lender, is not ratified by ratification of the latter contract. American Freehold Land-Mortgage Co. v. Dykes (Ala.), 18 South. Rep. 292. When the husband of an infant *feme covert* received the price for a conveyance of her land, and expended it while she was an infant, an offer by her to return the consideration, she being unable to do so, is not a condition precedent to a disaffirmance of her contract. Fox v. Drewry (Ark.), 35 S. W. Rep. 533. Burns' Rev. St. 1894, sec. 3364 (Rev. St. 1881, sec. 2944), provides that an infant *feme covert* cannot disaffirm a conveyance of land in which her husband has joined, he being of full age, without restoring the consideration. Held that, though such infant cannot disaffirm a mortgage given for borrowed money, she can disaffirm the note secured thereby, so as to escape personal liability. United States Saving Fund & Investment Co. v. Harris, 142 Ind. 226, 41 N. E. Rep. 451. A minor is not estopped to set up his infancy as a defense to a mortgage by the fact that at the time of its execution he represented that he was of age. Alt. v. Groff (Minn.), 68 N. W. Rep. 9. Payments made by the husband of an infant from his own means on a purchase by the infant do not give the infant, on rescinding the purchase, a claim for the money with which the payments were made. Jennings v. Hare (S.Car.), 25 S. E. Rep. 198. Where a contract is made for the benefit of a minor, the law puts in an acceptance for him, though he be ignorant of its existence. Richards v. Reeves (Ind. App.), 45 N. E. Rep. 624. A man cannot, because his fiancee broke the engagement, recover during her infancy the engagement ring given to her by him. Stromberg v. Rubenstein (Sup.), 44 N. Y. S. 405, 19 Misc. Rep. 647. An infant can make a binding contract of apprenticeship to learn a useful trade, and cannot avoid that contract on becoming of age. Pardey v. American Ship-Windlass Co. (R. I.), 37 Atl. Rep. 706. One who has adopted, after coming of age, a settlement, made during her minority, of claims belonging to her and others, is a proper party complainant to a suit to enforce such settlement. Glover v. Patten, 165 U. S. 394, 17 S. C. Rep. 411. In an action on a note made by defendant while a minor, he testified that after his majority he said to the plaintiff's agent that it was a just debt, and he would pay it "if I ever get so that I could without inconvenience to myself;" that the agent then asked him if he could not fix some time at which he would pay it, and he replied that he would not promise to pay the note in one year, nor in ten years, nor at any time. Held, that the evidence did not show ratification. Bresee v. Stanly (N. Car.), 119 N. Car. 278, 25 S. E. Rep. 870. It is not a condition of the disaffirmance by an infant of a contract made during infancy that he shall return the consideration received by him, if, prior to such disaffirmance and during infancy, the specific thing received has been disposed of, wasted, or consumed, and cannot be returned. MacGreal v. Taylor, 167 U. S. 688, 17 S. C. Rep. 961. An infant, on disaffirming his contract not to quit work without two weeks' notice, may recover on *quantum meruit* for the services rendered. Dearden v. Adams (R. I.), 36 Atl. Rep. 3. A married woman, who, while a minor, joined with her husband in the execution of a mortgage on their homestead, may disaffirm the act, without refunding the proceeds of the mortgage, where they were received by the husband, and she received no benefit therefrom, except indirectly as his wife. Bradshaw v. Van Valkenburg, 97 Tenn. 316, 37 S. W. Rep. 88. A minor is not bound by any agreement to settle a claim for damages made in his name by his mother, unless she had been appointed by the court as his next friend, and authorized to act and bind him in that capacity. Pittsburg, C., C. & St. L. Ry. Co. v. Healey, 170 Ill. 610, 48 N. E. Rep. 920. A parol agreement by a minor for a partition of real estate, without satisfactory evidence of ratification after coming of age, is void. A en v. Ruddell (S.Car.), 29 S. E. Rep. 198. A bicycle is not a necessity for a female infant working as a domestic by living in her employer's house. Rice v. Butler, 49 N. Y. S. 494, 25 App. Div. 388. Attorneys who contract with a minor, and perform services under that contract, are entitled to a reasonable compensation; and the minor's administrator may set up the contract in his answer to a suit brought by the heirs to compel an accounting, and may show, if the contract is invalid, that the sum paid the attorneys is a reasonable compensation. Hanlon v. Wheeler (Tex. Civ. App.), 45 S. W. Rep. 821. Under a law which authorizes a minor to contract for necessaries, he may engage an attorney to prosecute an action for a personal injury. Hanlon v. Wheeler (Tex.), 45 S. W. Rep. 821. An infant, upon becoming of age, is chargeable with knowledge of the legal effect of his deed, previously made, and must thereafter, within a reasonable time, disaffirm his act, or he is bound by his deed, even though there be no actual adverse possession thereunder. Bentley v. Greer, 100 Ga. 35, 27 S. E. Rep. 974. A written agreement by a minor to work as an apprentice for a stated compensation, and under which he continued to serve after attaining majority, though it be insufficient as an indenture of apprenticeship, because not executed in compliance with

Pub. St. ch. 149, relating to apprentices, is competent evidence, in connection with his acceptance of wages thereunder, and other acts, as tending to show a ratification and affirmance of the contract. McDonald v. Sargent (Mass.), 51 N. E. Rep. 17. Where minor heirs of a mortgagor recover from a mortgagee the difference between the price for which the mortgagee sold the mortgaged property under a power of sale in the mortgage and the amount due on the mortgage, if they elect on attaining their majority to set aside the sale, it being invalid, they must first refund the money received from the mortgagee. Price v. Blankenship (Mo.), 45 S. W. Rep. 1123. An infant 17 years old, working as a domestic, and living in her employer's house, agreed to purchase a bicycle, the title to remain in the seller until paid for. She used it three months, making payments thereon, and then returned it. Held that, the bicycle not being a necessity, she could recover back what she had paid. Rice v. Butler, 49 N. Y. S. 494, 25 App. Div. 388. Where an infant debtor was married and keeping house, the question whether articles purchased were necessary for him to make a crop to support himself and family was a mixed one of law and fact, and might be proved by any competent witness. Melton v. Katzenstein (Tex.), 49 S. W. Rep. 173. An adult's promise to pay the rent of premises occupied by him while an infant over 14 years of age is binding, even if made in ignorance of his nonliability. Bestor v. Hickey, 71 Conn. 181, 41 Atl. Rep. 555. Where one having given a bond for deed during infancy told the vendee, after becoming of age, that she would not convey the land to another unless the vendee failed to perform his contract, and afterwards demanded an advance payment from him, she affirmed the bond. Barlow v. Robinson, 174 Ill. 317, 51 N. E. Rep. 1045. The conduct of a minor after reaching his majority, in using in his business horses which he had bought while a minor, and afterwards selling them as his own, is not only an abandonment of an attempted rescission of the contract made after reaching his majority, but is also a ratification of the original sale. Hilton v. Shepherd (Me.), 42 Atl. Rep. 387. Where one acting for himself and others purchased land and gave his note as trustee therefor, the others assenting, taking the deed to himself as trustee for convenience in reconveying, as one of them was a minor, the latter cannot escape liability because of infancy, he not disaffirming until sued five years after majority, and in the meanwhile exercising his ownership over the land. Mission Ridge Land Co. v. Nixon (Tenn.), 48 S. W. Rep. 405. Before an infant, who has accepted a sum of money in settlement of her claim for damages for the killing of her husband, can repudiate the agreement, and sue at law for damages, she must return or tender the consideration received. Lane v. Dayton Coal & Iron Co. (Tenn.), 48 S. W. Rep. 1094.

JETSAM AND FLOTSAM.

LIMITATIONS OF THE HEIGHT OF BUILDINGS—EMINENT DOMAIN.

The Supreme Judicial Court of Massachusetts, in Attorney General v. Williams, 55 N. E. Rep. 77, affirms the power of the legislature to limit the height of buildings for new purposes and on new grounds. The problem was to preserve the beauty of Copley Square, a public park, and save as much light and air as possible to the Boston Public Library, the Museum of Fine Arts, Trinity Church, the New Old South Church, the Second Church of Boston, and the Massachusetts Institute of Technology, which abut on this square. A statute was passed limiting to ninety feet the height of all buildings so abutting. St. 1898, ch. 452.

Exclusive of the war power which may be said to arise from the changed *status* of the government, the power inherent in every sovereignty to regulate, restrict, or terminate the enjoyment of property by its owner is comprised under three heads, taxation, police, eminent domain. The first cannot operate solely upon a single individual, its burdens must be proportionate, and no specific property may be taken except upon failure of the owner to pay the money sum assessed. The second is of its nature specific, but may be exercised only for the preservation of the public morals, health, peace, or safety. With the last, either as an inherent attribute or subsequent limitation, is connected the right of the owner to just compensation. Kohl v. United States, 91 U. S. 371; Lewis, Eminent Domain, § 3; Commonwealth v. Alger, 7 Cush. 53; Boom Co. v. Patterson, 98 U. S. 406. But the purposes for which property may be taken are here more numerous by reason of this very restriction of just compensation. It is but a compulsory alienation of the whole or a part to public uses for a fair price. The courts have said in effect that any reasonable benefit or utility to the public under the circumstances of the case would justify the exercise of eminent domain at the discretion of the legislature. Olmstead v. Camp, 33 Conn. 532; Beekman v. Railroad Co., 3 Paige, 73. It has been applied in aid of almshouses, cemeteries, memorial halls, monumental statues, public baths, parks, and even a restaurant at a summer resort. As the court in this case says, "the uses which should be deemed public in reference to the right of the legislature to compel an individual to part with his property for a compensation are being enlarged with the progress of the people in education and refinement." It is only within a few years that lands have been taken for public parks. Now the right to take land for this purpose is generally recognized and frequently exercised. Foster v. Commissioners, 133 Mass. 321; Shoemaker v. United States, 147 U. S. 282; Matter of Commissioners of Central Park, 63 Bart. 282.

The legislature very wisely, therefore, in considering the capacity in which it should act, chose that of eminent domain, and provided for compensation to those whose property from ninety feet above the earth to the sky was thus taken. And when the constitutionality of the act was brought to bar the court did not hesitate to declare in its favor as in every respect in accordance with the laws regulating the taking of private property by right of eminent domain. The reasons which justify the taking of land for a public park will justify the expenditure of money for its improvement and adornment. The legislature was seeking to promote the beauty and attractiveness of a public park and to prevent unreasonable encroachments on the light and air it had previously received. The court refused to say that this was not such a matter of public interest as to call for the expenditure of public money, and to justify the taking of private property.

The decision of this point alone would not be so significant as the legislatures of few States could be persuaded to limit the height of buildings around the open squares of their cities and appropriate the money from the treasury to pay the damages. But the statute provided that any damages that might be assessed should be paid from the municipal treasury of Bos-

ton, thus placing the burden approximately on those receiving the benefits. Moreover, it is unlikely that in assessing damages the benefit of the improved park to the owner of each particular property was forgotten, and without doubt the burden was very light. Both statute and decision seem to us eminently sensible and replete with suggestion to the legislatures of other States and the people of many of our larger cities.—*Yale Law Journal.*

CORRESPONDENCE.

To the Editor of the Central Law Journal:

Has the State, and therefore municipalities through its and their respective boards of health, under the police power of the State, the authority to make vaccinations of pupils a prerequisite to their admission to the public schools? If so does the power exist absolutely and without limitations, or can it only be exercised when the contagion of small pox is imminent owing to its presence in the jurisdiction?

What is the power and authority of boards of education in the premises? H. C. W.

HUMORS OF THE LAW.

Judge A.—Well, Uncle Zeb, where are you going?

The Benedict—I wuz jis' going to de cote, suh, to see you, suh, and get a remorse from dat yaller limb dat I married thelyarder dar.

Judge A.—Why, see here, that won't do. Didn't you promise me that you would take her for better or worse, and all that?

The Benedict—Yas, suh; but den she am a sight wuss dan I took her fur.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Important Decisions and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

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1. ADVERSE POSSESSION—Licensee.—One who enters on land by license of a city, which claimed to own it under a deed, and does nothing that a licensee might not be expected to do, cannot acquire title by adverse possession, having given the city no notice that it set up such claim.—CITY OF ST. JOSEPH V. SEBL, Mich., 80 N. W. Rep. 987.

2. ATTACHMENT — Claimant of Property. — Under Mansf. Dig. Ark. §§ 356, 358, in force in the Indian Territory, which permit any person claiming title to or any interest in or lien upon property attached in an action against another to file an interplea in such action at any time before the sale of the property, or the payment of the proceeds to the plaintiff, the proceeding authorized on such interplea is merely one to determine the ownership of property or its proceeds in the hands of the court, and to obtain a delivery of such property or proceeds to the true owner; and an interpleader cannot lawfully prove or recover from the plaintiff in that suit the value of the attached property.—SWIFT & CO. V. RUSSELL, U. S. C. C. of App., Eighth Circuit, 97 Fed. Rep. 443.

3. BANKRUPTCY—Acts of Bankruptcy.—Under Bankr. Act 1898, § 3a, cl. 5, providing that it shall be an act of bankruptcy if a debtor shall have "admitted in writing his inability to pay his debts, and his willingness to be adjudged a bankrupt on that ground," where a corporation, by the unanimous vote of its stockholders, authorizes one of its officers to appear on behalf of the company in the federal court, and make the admission of insolvency contemplated by the statutes "in the event of an involuntary petition in bankruptcy being filed against said company," this is not in itself such an unqualified admission as is required by the act, and is, therefore, not an act of bankruptcy on the part of the corporation.—IN RE BAKER-RICKETSON CO., U. S. D. C., D. (Mass.), 97 Fed. Rep. 489.

4. BANKRUPTCY—Exemptions—Clothing and Provisions.—Where the State law exempts "wearing apparel and clothing of the debtor and his family" and "provisions for the debtor and his family necessary for one year's supply, either provided or growing or both," a bankrupt cannot claim to have set apart to him as exempt any portion of a stock of clothing and groceries owned and kept for sale in their store by a mercantile firm of which he is a member.—IN RE LENTZ, U. S. D. C., S. D. (S. Dak), 97 Fed. Rep. 486.

5. BANKRUPTCY—Opposition to Discharge—Fraud.—It is no ground for refusing a bankrupt's application for discharge that the debt of the creditor opposing such application was created by the fraud and false representations of the bankrupt. The effect of the discharge, if granted, upon any particular claim cannot be determined upon the petition for discharge, but only in an action for the enforcement of such claim, to which the discharge is pleaded in bar.—IN RE BLACK, U. S. D. C., N. D. (Cal.), 97 Fed. Rep. 493.

6. BANKS—Deposits—Payment on Forged Check.—The implied contract on the part of a bank with its depositor is that it will disburse the money standing to its credit only on his order, and in conformity with his directions, and therefore if it makes a payment on a check to which his name has been forged, or upon his genuine check to which the name of a necessary indorser has been forged, it must be held to have paid out of its own funds, and cannot charge the amount against the depositor, unless it shows a right to do so on the doctrine of estoppel, or because of some negligence chargeable to the depositor.—MECHANICS' NAT. BANK OF TRENTON V. HARTER, N. J., 44 Atl. Rep. 715.

7. BILLS AND NOTES—Bona Fide Purchaser.—That the makers of certain notes, without knowledge of their transfer, dealt with the original payee, who was agent of the owner, in securing an extension of time in which to pay them, and paid interest to the original

payee, does not of itself impugn the *bona fides* of the ownership of the holder.—MCALPIN v. BRADSHAW, Tenn., 53 S. W. Rep. 997.

8. BILLS AND NOTES—Payment to Agent—Authority.—Where payment of a note was made to an agent, who did not have possession thereof at the time of payment, the burden of proof is on the maker to show that the agent had authority to receive payment.—RHODES v. BELCHER, Oreg., 58 Pac. Rep. 117.

9. BILLS AND NOTES—Pleadings as Evidence—Principal and Surety—Signing of Surety's Name without Consent of Other Sureties.—Where a note was executed for the purpose of borrowing money, the signing of the name of an additional surety, without the consent of sureties who had previously signed, did not render the note void as to them, provided it was done before delivery to the payee.—EDWARDS v. MATTINGLY, Ky., 53 S. W. Rep. 1032.

10. BILLS AND NOTES—Sale—Consideration.—Where a firm collected a note for the payee, and while they still held the money he invested in it the purchase of another note, payable to the firm, his title to such note cannot be assailed on the ground that he took it in payment of the antecedent debt of the firm to him.—HULL v. SCHACHTER, Tenn., 53 S. W. Rep. 1004.

11. BROKERS—Compensation.—A defendant sued by a broker for commissions is entitled to an instruction which assumes plaintiff to have acted as a broker, where the declaration alleged that defendant agreed to pay plaintiff a fixed sum if plaintiff, "as a broker," would secure the sale to defendant, and plaintiff testified that he acted as a broker.—CARPENTER v. FISHER, Mass., 55 N. E. Rep. 479.

12. BUILDING AND LOAN ASSOCIATIONS—Agreement Repugnant to By-Laws.—Where a building and loan association's express agreement is repugnant to its by-laws, the former must prevail.—WELLING v. EASTERN BUILDING & LOAN ASSN. OF SYRACUSE, N. Y., S. Car., 34 S. E. Rep. 409.

13. BUILDING AND LOAN ASSOCIATIONS—Loans—Constitutional Law.—The act of 1875 (Rev. St. 1881, § 3407 *et seq*), authorizing building associations, when loanable funds are on hand, to make loans to that "member who shall take the same upon the terms most favorable to the company," and declaring that premiums, fines and interest on premiums should not be deemed usurious, does not contravene Const., art. 1, § 23, and art. 4, § 22, which prohibit the granting of special privileges, and the passage of special laws relating to interest, since, under the essential nature of the contract, the member stands in the dual relationship of lender and borrower.—INTERNATIONAL BUILDING & LOAN ASSN. NO. 2 v. WALL, Ind., 55 N. E. Rep. 481.

14. CHATTEL MORTGAGE — Construction.—A chattel mortgage on "all the personal property which I may own or acquire during said years" is void as to property afterwards acquired, having no connection with the property owned by the mortgagor at the time of the giving of the mortgage.—FERGUSON v. WILSON, Mich., 80 N. W. Rep. 1006.

15. CONFLICT OF LAWS—Common Law in Foreign State.—Where a husband seeks to enforce rights to property as against his divorced wife, in Texas, under the law of another State, the courts of Texas will, without proof as to the law of such other State, apply the law as it prevails in Texas.—BLETHEN v. BONNER, Tex., 53 S. W. Rep. 1016.

16. CONSTITUTIONAL LAW — Statutes — Title.—Const. art. 2, § 17, cl. 2, inhibiting a bill embracing more than one subject, which subject shall be expressed in the title, is violated by Acts 1897, ch. 107, the subject expressed in the title being the "filing and recording of labels, trade-marks, etc., and their protection," and the act treating of that subject and of a subject "adopting and using labels, trade-marks, etc., not filed and recorded and their protection," and of a subject, "the unauthorized use of the name or seal of one person by another."—STATE v. BRADT, Tenn., 53 S. W. Rep. 942.

17. CONSTITUTIONAL LAW — Wholesale Dealers.—Where a manufacturer is also engaged in business as a wholesale dealer, and buys and sells products other than those manufactured by himself, he is within the law requiring a wholesale dealer's license, as well with respect to the products manufactured by him, and sold in the course of that business, as with respect to products bought by him on the market and so sold; and he owes the license upon the basis of his gross receipts from all sales.—UNION OIL CO. v. MARRERO, La., 26 South. Rep. 766.

18. CONTRACTS — Breach — Damages.—A canal company was to supply plaintiff with water from its canal, constructed on a public highway, but was not to be liable for damages for non-delivery of water if it was lawfully "restrained from such delivery." The county supervisors filled in the canal, which was never reconstructed. Plaintiff sued the company for damages for breach of its contract. Held that, as the company was to supply the water from the particular canal so long as it was permitted to do so, it was not liable.—FRESNO MILLING CO. v. FRESNO CANAL & IRRIGATION CO., Cal., 59 Pac. Rep. 140.

19. CONTRACT—Husband and Wife — Agreement for Separation.—An agreement of separation between a husband and wife, resident in Colorado, where by statute the wife has the same property rights and right to contract as though unmarried, is presumptively valid; and a party pleading it as a cause of action or matter of defense need not aver or prove that it was fair and just to the wife.—DANIELS v. BENEDICT, U. S. C. C. of App., Eighth Circuit, 97 Fed. Rep. 867.

20. CONTRACTS — Mutuality.—Plaintiff offered to deliver defendant stone "in such quantities as may be desired," which he accepted without qualification, and without reference to any contract he had for using the stone. In an action to recover for stone furnished, defendant claimed damages for failure to furnish sufficient stone to complete a certain contract. Held that, as defendant was not bound to receive sufficient stone to complete such contract, plaintiff was not liable for failure to furnish it.—HOFFMANN v. MAFFIOLI, Wis., 80 N. W. Rep. 1032.

21. CONTRACTS — Privity.—A private corporation, called the Cannon River Manufacturers' Association, entered into an agreement with a mill owner (defendant's grantor) on the Cannon river by which the latter agreed, among other things, to maintain on his premises a dam of sufficient height to create certain reservoirs of water. In an action by the plaintiffs, owners of other mills on the river, to compel defendant to comply with the terms of this agreement, held, that the plaintiffs had no cause of action; there being no privity between them and the Cannon River Manufacturers' Association, and the agreement being one exclusively between the association and the defendant's grantor, and in which the plaintiffs have no legal interest.—KLEMER v. SHEFFIELD, Minn., 80 N. W. Rep. 1055.

22. CONVERSION—Measure of Damages.—In an action for conversion of railroad ties, an instruction that the measure of damages was the value of the ties, and not the value of the logs before they were made into ties, was proper.—SALTMARSH v. CHICAGO, ETC. RY. CO., Mich., 80 N. W. Rep. 981.

23. CORPORATIONS—Bank Stock — Transfer — Assessment.—Title of C to stock in a bank is divested, so as to relieve him of liability for an assessment levied four years thereafter, on the bank becoming insolvent, where he employed auctioneers to sell it, and put into their hands his stock certificate, having indorsed thereon an assignment in blank, and a power of attorney in blank to transfer the stock, duly executed by him, and they knocked down the stock to S, who was cashier of the bank, and took the certificate to the banking house, and delivered it to S, "as cashier" of the bank, and requested him to transfer the shares to the purchaser thereof; and this, notwithstanding a by-law of the bank that "no officer shall, without permis-

sion of the directors, hold stock in the bank,"—the inference from the payment of semi-annual dividends to 8 for the four years being that the bank had accepted him as a stockholder.—EARLE v. COYLE, U. S. C. C. of App., Third Circuit, 97 Fed. Rep. 410.

24. CORPORATIONS — Defrauded Bonus Subscribers.—The subscribers to a bonus fund for a corporation have a right to rely upon an agreement signed by a director and stockholder as trustee, whereby he agrees that three-fourths of the capital stock shall be subscribed in a certain time; and to rely upon his subscription with the others, which is a trust fund for those who deal with the corporation as *bona fide*.—MOORE v. UNIVERSAL ELEVATOR CO., Mich., 80 N. W. Rep. 1015.

25. CORPORATIONS—Name—Right to Use.—A corporation may be enjoined from using and doing business under the same name as another corporation, to the latter's injury, where the latter first adopted the name, and the use by the former would be apt to deceive the public.—ST. PATRICK'S ALLIANCE OF AMERICA v. BYRNE, N. J., 44 Atl. Rep. 716.

26. CORPORATIONS—Orders to Employees — Redemption.—Acts 1899, ch. 11, §§ 1, 2, requiring corporations to redeem in cash all coupons, scrip, punch-outs, store orders, or other evidences of indebtedness used to pay their employees, on demand of a *bona fide* holder, include a corporation issuing coal orders to its employees, though they had the privilege of receiving cash instead of the coal orders, subject to regulations whereby the payment of the cash was so delayed that 75 per cent. of the employees preferred to accept the coal orders.—HARRISON v. KNOXVILLE IRON CO., Tenn., 53 S. W. Rep. 955.

27. CORPORATIONS—Special Privileges Given by Charter.—A provision of the special charter of a railroad corporation authorizing its directors to fix the rates for transportation of passengers and freight on its road, if construed as a contract which would prevent the State from regulating such rates, is in derogation of its sovereign powers, and to be strictly construed and limited to the immediate parties; and the immunity granted does not pass by a sale of the company's property on foreclosure to its successor, although by statute or by its charter the purchaser succeeds generally to "all the franchises, rights, privileges and immunities" of the mortgagor.—MATTHEWS v. BOARD OF CORPORATION COMRS. OF NORTH CAROLINA, U. S. C. C., E. D. (N. Car.), 97 Fed. Rep. 400.

28. CORPORATIONS—Stock—Failure of Consideration.—A personal agreement between several stockholders as to their respective interests in land subsequently conveyed absolutely by them to the corporation in payment for stock does not succeed to the corporation, and cannot be enforced by it in an action against a portion of such stockholders, whose title to the land proved defective.—JENKINS v. BRADLEY, Wis., 80 N. W. Rep. 1025.

29. CORPORATIONS — Stock Subscriptions.—A subscriber to the capital stock of a corporation cannot be compelled to pay a subscription until the *de jure* organization of the corporation.—WILLIAMS v. CITIZENS' ENTERPRISE CO., Ind., 55 N. E. Rep. 425.

30. CORPORATIONS — Stockholders' Liability.—One who is the owner of stock of a corporation by receiving and paying for it cannot defeat liability to creditors of the corporation by showing a variance between the subscription agreement and the articles of incorporation as to the purposes of the incorporation.—WALTER v. MERCED ACADEMY ASSN., Cal., 59 Pac. Rep. 136.

31. COUNTIES—Change of Venue.—Under Burns' Rev. St. 1894, §§ 1847, 1848, making the county from which a change of venue is taken in a criminal case liable for certain costs, to be allowed by the court trying the cause, the allowance and payment of attorney's fees by the county in which the case was tried does not entitle it to recover therefor from the other county.—BOARD OF COMRS. OF HAMILTON CO. v. BOARD OF COMRS. OF TIPTON CO., Ind., 55 N. E. Rep. 453.

32. COURTS — Constitutional Law.—The court, in determining the constitutionality of a law abolishing courts, will not consider, on one hand, the fact that political parties and public sentiment have been demanding retrenchment and the abolition of useless courts, nor, on the other, that the legislature was actuated by sinister motives, and sought to legislate a particular judge out of office.—STATE v. LINDSAY, Tenn., 53 S. W. Rep. 950.

33. CRIMINAL EVIDENCE — Murder — Character of Deceased.—In a prosecution for murder, evidence that deceased was a violent and dangerous man, and that he had exhibited a violent and vicious temper toward another just before the homicide, is admissible, where there is evidence tending to show that the killing was done in self defense.—STATE v. MCIVER, N. Car., 34 S. E. Rep. 489.

34. CRIMINAL LAW — Blackmail.—An information charging, in effect, that the defendants conspired together to commit the crime of blackmailing "by filing an affidavit" before a magistrate accusing a certain person of a certain crime punishable by law, with intent to extort money from him, is good under Burns' Rev. St. 1894, § 1999, providing that whoever accuses any person of any crime punishable by law with intent to extort money from such person is guilty of blackmailing.—UTTERBACK v. STATE, Ind., 55 N. E. Rep. 420.

35. DAMAGES — Liquidated Damages — Contract.—Plaintiffs contracted with R to erect a building, and have it ready on or before a certain date, and to let the building to them for a term of years, which contract stipulated that he should pay them $50 for each day after the date named for the performance, "as fixed, settled, and liquidated damages" which they "will sustain by reason of the failure to complete said building" within the time specified. Held, that the amount stipulated was liquidated damages, and not a penalty.—CURTIS v. VAN BERGH, N. Y., 55 N. E. Rep. 398.

36. DECEIT—Damages—Recoupment.—Plaintiffs, having tried the case on the theory that an issue as to value of property was not raised, cannot for the first time on appeal contend that there was no such issue to try. When, in an action for false representations as to land traded by defendant to plaintiffs, defendant seeks to recoup by showing that the land traded by plaintiffs was worth less than represented, and the court finds for both parties on their several contentions, plaintiffs are properly awarded the difference between the market value of the property traded to them and the market value of the land traded by them.—BARBOUR v. FLICK, Cal., 59 Pac. Rep. 122.

37. DEEDS—Assumption of Mortgage—Mortgages.—A recital in a deed that the conveyance is made subject to a mortgage claim, the payment of which is a part of the consideration, imports an undertaking by the grantee to pay the mortgage.—JAGER v. VOLLINGER, Mass., 55 N. E. Rep. 458.

38. DEED — Covenant — Running With the Land.—A deed conveying a right of way for a railroad in consideration of five dollars and an agreement by the grantee to run daily passenger trains on and along the right of way, with provision that, if it is abandoned for non-user for six months, title shall revert to the grantor, contains a covenant running with the land, as to the running of trains, though the road was not built when the deed was made, and the word "assignee" is not used; so that a purchaser of the road is liable thereon for a breach subsequent to the purchase, though there had been breach of the covenant before the transfer.—DOTY v. CHATTANOOGA UNION RY. CO., Tenn., 53 S. W. Rep. 944.

39. DOWER — Homestead.—A contract purchaser of land, at whose direction the vender conveys the land to a third person as security for money to complete payment of the purchase price, is not seised of a legal title, so as to entitle his wife to dower therein.—STEPHENS v. LEONARD, Mich., 80 N. W. Rep. 1002.

40. ELECTIONS—Sheriffs—Courts.—Shannon's Code, § 1309, declares that the circuit court shall determine all

contested elections, and section 6109 provides that the chancery court shall have concurrent jurisdiction of all civil causes triable in the circuit court. Held, that since a contested sheriff's election was not a "civil cause," within the meaning of the statute, the chancery court had no jurisdiction of such a contest.—SHIELDS v. DAVIS, Tenn., 53 S. W. Rep. 948.

41. ESTOPPEL BY CONDUCT.—Where a wife knew her husband was applying for a loan, and was to convey her separate property to secure it, and she made no claim to the property, she was estopped to afterwards assert title to it.—PAHMEYER v. MEYER, Tenn., 53 S. W. Rep. 982.

42. EVIDENCE—Res Gestæ.—Where plaintiff's intestate was found, apparently in great suffering, near defendant's railroad track just after a train passed, his declaration then made, in response to an inquiry that he had been kicked off the train, was admissible as part of the *res gestæ*.—LOUISVILLE, ETC. R. CO. v. SHAW'S ADMR., Ky., 53 S. W. Rep. 1048.

43. EXECUTION—Enforcement — Injunction.—Injunction will not be granted to restrain enforcement of an execution on the ground that the judgment is excessive, the court in which it was rendered having jurisdiction, and no fraud being alleged. The irregularity, if any, should have been corrected by appeal or motion.—HENDERSON v. MOORE, N. Car., 34 S. E. Rep. 446.

44. FRAUDULENT CONVEYANCES — Consideration.—Where demand negotiable notes were given for the sale of an insolvent's stock, and the buyer paid a debt of the insolvent, on which he was liable as surety, it cannot be said that the sale was without consideration.—GORDON v. ALEXANDER, Mich., 80 N. W. Rep. 978.

45. GARNISHMENT — Agent of Non-Resident.—Under Gen. St. §§ 1243, 1245, authorizing service of garnishment on a resident agent of a non-resident garnishee, and subjecting property found in the agent's hands, and making the debt due from the garnishee to defendant liable to the garnishment, the court can thus obtain jurisdiction only of property which can be reached by its process; and hence where service is made on one of four partners of a foreign firm, as agent of the firm, he is entitled to appear specially, and have the cause erased from the docket, unless the complaint and writ or return show that some part of the co-partnership business was transacted in the State, or that he had property within the State belonging to the debtor.—G. M. WILLIAMS CO. v. MAIRS, Conn., 44 Atl. Rep. 729.

46. GUARDIAN—Judgment Conveying Land to Minor.—A guardian of a minor has no authority to waive the issuing and service of summons on his ward in an action affecting the ward's rights, nor to dispense with the appointment of a guardian *ad litem*, unless authorized so to do by statute, and a judgment against a minor in an action wherein he did not have his day in court may be reversed upon petition in error filed by him within the statutory time after reaching the age of majority. Such judgment, though void in legal effect, may be a cloud upon his title or rights, and he has the right to remove such cloud by a reversal of the judgment.—ROBERTS v. ROBERTS, Ohio, 55 N. E. Rep. 411.

47. HABEAS CORPUS — Scope of Remedy—Criminal Law.—The merits of criminal cases in which defendants have been convicted cannot be considered on an application for a writ of *habeas corpus*.—STATE v. CAYARD, La., 26 South. Rep. 773.

48. HUSBAND AND WIFE—Liability of Wife for Necessaries.—The husband, and not the wife, is primarily liable for the rent of a house and the price of groceries furnished the family, and the wife's money in the hands of the court can only be appropriated to the payment of such bills by express contract on her part to that effect.—WEBER v. ZOOK, Ky., 53 S. W. Rep. 1034.

49. INJUNCTION—Trespass by Co-Tenant.—An owner, in indivision, of timber lands, has no right to cut and take timber therefrom without the consent of his co-owner, and, if he attempt to do so, may be stopped by injunction, and such injunction is not one which may be dissolved on bond.—HAKE v. JUDGE OF FOURTH JUDICIAL DISTRICT, La., 26 South. Rep. 769.

50. INSOLVENT CORPORATIONS — Sale of Property on Foreclosure—Claims.—A claim for services rendered in behalf of bondholders of an insolvent corporation in relation to the foreclosure of a mortgage securing the bonds cannot be allowed and paid from the proceeds of the mortgaged property, especially where there is no proof of a contract for such services with all the bondholders interested in the fund.—TRUST & DEPOSIT CO. OF ONONDAGA v. SPARTANBURG WATERWORKS CO., U. S. C. C., D. (S. Car.), 97 Fed. Rep. 409.

51. INTOXICATING LIQUORS—Sale of, in Hotel.—A room at a hotel, set apart for the sale of intoxicating liquors at retail, is a saloon, within Comp. Laws 1897, § 2769, subd. 7, granting villages authority to suppress saloons for the sale of liquors.—RATTENBURY v. VILLAGE COUNCIL OF NORTHVILLE, Mich., 80 N. W. Rep. 1012.

52. JUDGMENTS—Joint Obligors — Res Judicata.—Under Rev. St. 1895, art. 1203, providing that any principal obligor may be sued alone or jointly with any other obligor, a judgment against one joint obligor in an action wherein plaintiff dismisses as to the other is not a bar to a subsequent suit against the latter, for he is in the same position as if he had not been sued.—BUTE v. BRAINERD, Tex., 53 S. W. Rep. 1017.

53. JUDGMENT—Pleadings — Infants.—Under a bill to collect a judgment, merely alleging that complainant has a judgment against defendant which is outstanding and unpaid, he cannot impeach the judgment, which shows on its face that it has been paid, though in the action in which it was recovered he was suing as an infant by next friend, and the judgment was a consent judgment.—ODDY v. ROANE IRON CO., Tenn., 53 S. W. Rep. 1002.

54. JUDGMENT LIEN—Death of Debtor — Issue of Execution — Priority.—Where a judgment is a subsisting lien on the lands of the debtor at the time of his death, it is not necessary thereafter to issue execution upon it in order to preserve the lien. It is entitled to share in the proceeds of the land, when sold by the personal representative, according to its priority at the time of the debtor's death, although execution be not issued thereon within five years from its rendition or the date of the last execution.—AMBROSE v. BYRNE, Ohio, 55 N. E. Rep. 408.

55. JUDGMENTS — Parties — Res Judicata.—Where, in an action by heirs to subject lands mortgaged by their father to plaintiff to the payment of the mortgage debt, such heirs, by mistake, described the tract involved in such suit so as to include a part of another tract which they held as heirs of their mother, the fact that such land was erroneously included in plaintiff's deed as the purchaser at a sale under such proceedings, did not vest him with title to such lands, nor prevent them from claiming title to such lands as heirs of their mother in a subsequent proceeding, since, although such heirs were parties to both actions, they did not appear under the same right, and therefore the decree in the former suit was not *res judicata* against them.—MELTON v. PACE, Tenn., 53 S. W. Rep. 909.

56. LANDLORD AND TENANT—Lease—Evidence.—That defendant, after receiving a proposition from plaintiff as to leasing a coal yard for a year, occupied the premises for a short time, but without signing a written lease or coming to any definite agreement, is insufficient to justify a finding that there had been a contract to lease the premises for one year.—GRAMM v. STERLING, Wyo., 59 Pac. Rep. 156.

57. LANDLORD AND TENANT — Leases for Years.—A lease of land for a term of years is a conveyance of real estate, within Civ. Code, §§ 1214, 1215, providing that every conveyance of real property, other than a lease for one year, is void as against a subsequent purchaser whose conveyance is first recorded, and that the term "conveyance" shall embrace every instru-

ment by which any estate or interest in real property is created, except wills.—COMMERCIAL BANK OF SANTA ANA v. PRITCHARD, Cal., 59 Pac. Rep. 130.

58. LANDLORD AND TENANT—Lien for Rent—Enforcement.—Where a lease by its terms gives a landlord a lien on furniture placed on the premises by the tenant as security for the rent, the lien is an equitable one, and not a pledge, and should be enforced by a bill to establish the lien, and for the sale to satisfy it, instead of a bill to foreclose the pledge.—POTTER v. GREENLEAF, R. I., 44 Atl. Rep. 718.

59. LANDLORD AND TENANT — Unsafe Premises.—Where leased premises are insufficient and unsafe for the purpose for which they are leased, and such fact is known to the lessee when the lease is made, or is apparent on reasonable inspection, the lessor is not liable to one injured by reason of the using of the premises by the lessee in their unsafe condition.—SCHWALBACH v. SHINKLE, WILSON & KRIES CO., U. S. C. C., S. D. (Ohio), 97 Fed. Rep. 483.

60. LIFE INSURANCE — Notice of Acceptance of Application.—A receipt for an insurance premium, accompanying an application for insurance, provided that, if the applicant received no notice within 30 days of any action on the application, then no insurance should be effected, and the premium should be returned. Held, that the applicant was entitled to a return of the premium after the expiration of 30 days without notice, though the application had been approved, and policy issued, but had miscarried in the mail.—MUT. LIFE INS. CO. OF NEW YORK v. ELLIOTT, Tex., 53 S. W. Rep. 1014.

61. LIMITATIONS—Acknowledgment of Debt.—A letter in which a surety on a note states to the payee that he is informed that the note, describing it, is not paid, and asks the payee to collect the money due upon it, and declares that he "will not longer be held good for the note" in case it be not promptly collected, is a sufficient acknowledgment of the indebtedness to arrest the running of the statute of limitations.—HARMS v. FREYTAG, Neb., 80 N. W. Rep. 1039.

62. MANDAMUS—Remedy by Writ of Error.—*Mandamus* will not lie to compel a circuit judge to set aside a judgment rendered on *certiorari* reversing an order of the probate court, since the remedy by writ of error is adequate.—REED v. BEACH, Mich., 80 N. W. Rep. 985.

63. MASTER AND SERVANT—Negligence.—Where deceased, an experienced motorman, was running his car back to meet another car on the same track, and did not run slowly and watch constantly, and the two cars collided, he was guilty of contributory negligence.—HUDSON v. PEOPLE'S ST. RY. CO., Mass., 55 N. E. Rep. 464.

64. MASTER AND SERVANT — Pleading—Assumption of Risk.—A complaint proceeding on the theory that plaintiff was employed by defendant to perform a certain service, unattended by danger that while so employed he was ordered by defendant to perform a different and perilous service, in which he was inexperienced; that he was ignorant of the peril, and defendant negligently failed to warn him; and that the peril was not apparent to an inexperienced person,—states a cause of action, since the rule that the servant assumes risks incident to his employment does not apply to such a case.—CONSOLIDATED STONE CO. v. REDMON, Ind., 55 N. E. Rep. 454.

65. MINES AND MINERALS — Declaratory Statement—Location.—Under Pol. Code, § 3612, providing that the declaratory statement containing a description of a mining claim filed with the county clerk must contain the location and description of each corner, with the markings thereon, a statement describing a claim by metes and bonds, and giving no description of the corners or the markings thereon, is invalid.—PURDUM v. LADDIN, Mont., 59 Pac. Rep. 153.

66. MORTGAGE—Cancellation—Acknowledgment.—In a suit to set aside a sale under a trust deed and declare the trust deed void, an allegation that the probating officer did not examine the grantor's wife at all, that she did not understand the instrument, and did not inform the officer that she understood it, and that he had no means of knowing whether she understood it or not, is good as against a motion to dismiss for want of equity on the face of the bill.—FENTON v. BELL, Tenn., 53 S. W. Rep. 984.

67. MORTGAGES — Fraud.—Plaintiff's decedent held two mortgages against land owned by his son, the consideration for which was money loaned to the son to pay the purchase price, and these mortgages decedent released on receipt of a third mortgage of the same premises, covering the same consideration, and purporting to be executed by the son and his wife. After the death of the son, his widow claimed dower and homestead in the land, and refused to pay the third mortgage on the ground that she had not joined in its execution, whereon plaintiff foreclosed and purchased the land, and afterwards discovered that the widow had not joined in the execution of the mortgage, which was forged as to her. Held, that an action in equity would lie to revive the two earlier and genuine mortgages.—LYNN v. LYNN, Mich., 80 N. W. Rep. 1000.

68. MUNICIPAL BONDS—Constitutionality of Statute—Refunding Bonds.—Const. Colo. art. 11, § 6, as amended in 1888, which prohibits the creation of indebtedness by counties without a favorite vote of the electors, does not apply to the refunding of debts; and the act of April 17, 1889 (Sess. Laws Colo. 1889, pp. 81, 82, § 2), authorizing counties to refund their judgment and bonded debts, was not unconstitutional because it failed to make a favorable vote of electors a condition precedent to the issue of refunding bonds.—GERR v. BOARD OF COMRS. OF OURAY CO., U. S. C. C. of App., Eighth Circuit, 97 Fed. Rep. 435.

69. MUNICIPAL CORPORATION — Electric Lighting — Easement in Streets.—A city having only such power to grant an easement in a street as is given it by the legislature, and there being no authority in its charter for granting perpetual easements, and the records of the common council showing only that the right to place poles and wires in the street was granted complainants, who have no franchise from the State, in connection with a proposition to do city lighting, a contract for which for a limited period was afterwards given them, and lamps for lighting the streets being put in before any were used for private lighting, and the only private lighting being that of a few buildings along the streets used for city lighting, they have no right to continue their poles and wires in the streets, after the city has ordered them out, at termination of contract.—HORNER v. CITY OF EATON RAPIDS, Mich., 80 N. W. Rep. 1012.

70. MUNICIPAL CORPORATIONS — Fire Department—Contract.—Where horses were kept on hand in open sight at an engine house in a city fire department, in accordance with the directions of the chairman of the council committee on that department and the engineer, it may reasonably be inferred that the committee had notice thereof, and, if more was wanting to make a valid contract with the city for their use, a subsequent vote of the committee, ratifying the same, would be sufficient, the committee being authorized to contract for their employment.—MAY v. CITY OF GLOUCESTER, Mass., 55 N. E. Rep. 465.

71. MUNICIPAL CORPORATIONS — Governmental Functions — Negligence.—An administratrix cannot maintain an action against a city to recover for the death of her intestate, caused by the city's neglect to observe sanitary principles in the construction of one of its sewers, by reason whereof the cellar of the house where plaintiff lived was, in time of heavy rains, filled with sewage, which generated unhealthy vapors and odors, causing the illness of which plaintiff died.—HUGHES v. CITY OF AUBURN, N. Y., 55 N. E. Rep. 389.

72. MUNICIPAL CORPORATIONS — Highway—Rights of Abutting Owner.—A town is not liable for damages sustained by an owner of land because of the lowering of a highway in front of his land by a street railway

acting under a franchise lawfully granted it by the selectmen of the town.—PURINTON V. INHAB. OF TOWN OF SOMERSET, Mass., 55 N. E. Rep. 461.

73. MUNICIPAL CORPORATIONS—Injury to Property in Grading Street.—Under Const. § 242, a city is liable for injury to a lot caused by throwing surface water thereon in changing the grade of a street.—CITY OF MT. STERLING V. JEPHSON, Ky., 53 S. W. Rep. 1046.

74. MUNICIPAL CORPORATIONS — Power to Issue Negotiable Instruments.—Municipal corporations possess no power to incur debts, and issue negotiable instruments therefor, unless specially authorized to do so by their charters or by statute, or the power to do so can be clearly implied from some power expressly given, which cannot be fairly exercised without it.—WATSON V. CITY OF HURON, U. S. C. C. of App., Eighth Circuit, 97 Fed. Rep. 449.

75. MUNICIPAL CORPORATIONS — Taxation—Street Assessments.—Laws 1893, p. 171, provides that, where cities of 2,500 inhabitants improve a street at the expense of abutting property, the owners thereof whose assessments exceed $25 may pay such assessments in installments, and the city may issue interest-bearing bonds for the amount of deferred assessments to pay for such improvements. Held, that since Const. art. 1, § 32, providing that all taxation shall be equal and uniform, and *Id.* art. 9, § 1, requiring the legislature to provide for uniform and equal rate of assessment and taxation did not apply to special assessments for street improvements, Laws 1893, p. 171, was not an abuse of the legislature's discretion, and hence was valid.—LADD V. GAMBELL, Oreg., 59 Pac. Rep. 113.

76. MUNICIPAL CORPORATIONS — Use of Streets.—The purpose for which the designation of streets by the city is required is to prevent the use of any street without the consent of the city, and that object is attained by a general designation of all the streets. The permission of the city is a prerequisite to the right of the company to enter the streets, and the designation is for the purpose of establishing what streets the company may use, and not what they must occupy.—STATE V. HUDSON CO. ELEC. CO., N. J., 44 Atl. Rep. 713.

77. NEGLIGENCE — Damages.—The mere fact that a cake of ice jolted out of an ice wagon while the horses were trotting up a hill injuring a child who was hanging on the rear end of the wagon, is not sufficient evidence of negligence to authorize a judgment for damages, though the persons in charge of the wagon knew that children were in the habit of hanging on ice wagons, and that such child was hanging on the wagon at the time of the accident.—WALSH V. HAYES, Conn., 44 Atl. Rep. 725.

78. NEGLIGENCE—Dangerous Premises.—In an action for injuries sustained by stepping over an unguarded retaining wall on a dark night, the evidence showed that defendant owned a business building at the corner of two streets. The front line of the building on each street was set back from the sidewalk line, but the whole space from the building to the sidewalk, as well as the sidewalk, was covered with concrete, and presented a uniform appearance, except that a retaining wall two feet high extending from the corner of the building to the sidewalk line, separated the concreted area on defendant's premises on the east side of the building from the area on the south side thereof. Plaintiff was without fault. Held, that it was error to direct a verdict for defendant.—SEARS V. MERRICK, Mass., 55 N. E. Rep. 476.

79. OFFICE AND OFFICER—Abolishment—Vacancies.—The power to create vacancies in a public office, incumbents of which are charged with continuing duties and responsibilities, rests, in the absence of provisions to the contrary, in the body possessing the original power of appointment.—STATE V. OWEN, N. Car., 34 S. E. Rep. 424.

80. OFFICE AND OFFICERS — Public Office — Property Right.—Persons elected to the office of the board of education, a public corporation, have during their term of property right therein, to the extent that, the office not being abolished, but the act establishing it being merely amended, they cannot be deprived thereof.—STATE V. GRIFFIN, N. Car., 34 S. E. Rep. 429.

81. OFFICER DE FACTO — Validity of Acts.—The official acts of an officer *de facto* are valid, as far as the rights of third persons and the public are concerned, unless the defects in the officer's title are notorious, and sufficient to overcome the apparent evidence to the contrary; but when they see a person occupying an important public office by virtue of an election by the people, and publicly exercising its duties within the period for which he was elected, they are entitled to consider him to be of such officer, and will be protected in their rights if they do so.—STATE V. MAYOR, N. J., 44 Atl. Rep. 709.

82. PARTNERSHIP—Limitations.—The rule that property held by a creditor as security may be retained and applied on a debt against which limitations have run is inapplicable to a partner coming into possession by operation of law, on his partner's death, of assets belonging to his estate, represented by his interest in the firm, on which he was to have a lien.—GRESHAM V. HARCOURT, Tex., 53 S. W. Rep. 1019.

83. PAYMENTS—Application — Evidence.—Where defendant delivered cotton to plaintiff, with the instruction that the proceeds should be applied on a certain note and mortgage, it will be regarded, in law, that such proceeds were so appointed, though they were in fact applied to another debt which plaintiff claimed to hold against defendant.—REID V. WELLS, S. Car., 34 S. E. Rep. 401.

84. PAYMENT — Notes.—The giving of a note, not governed by the law merchant, by a debtor to a creditor, is not evidence that it was offered and accepted as payment; but the giving of a promissory note, governed by the law merchant, is *prima facie* evidence of payment, and must be accepted as conclusive, in the absence of evidence that such was not the intention of the parties.—BRADWAY V. GROENENDYKE, Ind., 55 N. E. Rep. 434.

85. PHYSICIANS—Services — Evidence.—In an action by a physician for services, under an allegation that "plaintiff rendered professional services," he cannot prove services rendered by another physician acting for him.—SAYLES V. FITZ GERALD, Conn., 44 Atl. Rep. 733.

86. PRINCIPAL AND AGENT — Purchase of Principal's Property.—One employed by the owner of mortgaged premises to sell the same under an agreement that the agent shall receive a commission on the price received, cannot, to the exclusion of the owner, purchase the premises on a subsequent foreclosure of the mortgage, while he is acting as agent for the owner, and, if he does so, equity will require him to account therefor to his principal; and the fact that the agent gave the principal notice 12 or 13 days prior to the sale that he would purchase at the foreclosure sale, to protect his interest, which consisted of a prospective commission for the sale of the premises, to accomplish which he had made some effort, does not change the rule.—KIMBALL V. RANNEY, Mich., 80 N. W. Rep. 992.

87. PRINCIPAL AND SURETY—Indemnity — Bond to Indemnify Surety.—Where a bond is given to a surety for the expressed purpose of counter security against the liability assumed by him, the liability of the maker thereon is commensurate with the liability of the surety, although, by its terms, the bond expires before the contract on which the surety is bound fully matures.—SPRINGS V. BROWN, U. S. C. C., D. (S. Car.), 97 Fed. Rep. 405.

88. PROCESS TO ANOTHER COUNTY.—After service of summons in a personal action, in the county where commenced, upon a party who, by the pleading filed, is a real defendant, summons may properly be issued to any other county of the State for service upon other defendants.—MCCORMICK HARVESTING MACH. CO. V. COMMINS, Neb., 80 N. W. Rep. 1049.

89. RAILROAD COMPANY — Fire — Proximate Cause.—Where defendant negligently permits inflammable material to accumulate on its right of way, and the same is ignited by sparks from a locomotive, and the fire spreads on adjoining lands, and thence, across the lands of several intervening owners, covered with inflammable material, for a distance of two miles, on plaintiff's land, damage to plaintiff two days after the fire started is the remote, and not the proximate result of defendant's negligence, and hence no recovery can be had.—HOFFMAN v. KING, N. Y., 55 N. E. Rep. 401.

90. REAL ESTATE BROKERS—License—Action for Commissions.—Act 1897, ch. 2, § 14, provides that real estate brokers must be taxed, and that the exercise of such privileges without such license is a misdemeanor. In January complainant had no license to act as such broker, but several weeks thereafter paid the tax, and received a license for one year from the 1st of January. Complainant, having been employed by defendant in January to sell his real estate, sued for commission on a sale made before said tax was paid. Held, that the action would not lie, as such contract to sell was void.—SAULE v. RYAN, Tenn., 53 S. W. Rep. 977.

91. SALE—Fraud—Rescission.—In an action by a purchaser of city lots to rescind the sale on the ground that the lots conveyed were not those pointed out to him by his agent employed to negotiate the purchase, where it appears that the supposed agent was the real party in interest, he cannot object that the purchaser could have discovered the fraud by an inspection of the public records, as the latter had a right to rely on the agent's statements.—ROHROF v. SCHULTE, Ind., 55 N. E. Rep. 427.

92. SALES — Measure of Damages — Contract.—The measure of damages for misrepresentations by the seller as to the quality of hay sold is the difference between the value of the hay as it actually was and the price paid for it, plus the freight paid by the buyer for the shipment of the hay to one to whom he had sold it and who refused to receive it.—MERKLEY v. PHILLIPS, Ky., 53 S. W. Rep. 1037.

93. SALES — Statute of Frauds.—Plaintiff agreed to furnish certain brick and the buyer agreed to pay monthly for all brick delivered, and drew an order on a third person to pay to plaintiffs, monthly, "such sums of money as may become due for all the brick delivered during the preceding month." The person on whom the order was drawn accepted it orally. Held an agreement to pay the debt of another, within the statute.—O'CONNELL v. MT. HOLYOKE COLLEGE, Mass., 55 N. E. Rep. 460.

94. SPECIFIC PERFORMANCE — Judgment.—Plaintiff was induced by fraud to convey a third interest in certain land to his grandfather on an agreement that the grandfather would thereafter reconvey a half interest to him. On failure so to do, plaintiff sued for specific performance. Held, that a judgment putting plaintiff *in statu quo*, instead of compelling specific performance, was within the discretion of the trial court.—ALEXANDER v. MCDANIEL, S. Car., 34 S. E. Rep. 405.

95. TENANCY IN COMMON — Mortgage Foreclosure.—Where one of the tenants in common of land buys it on foreclosure of mortgage, the others cannot, without offering to contribute, have it sold on partition, they to share in any surplus above the amount paid on the mortgage sale.—REED v. REED, Mich., 80 N. W. Rep. 996.

96. TRESPASS—Sheriffs—Wrongful Attachment.—A recovery may be had against a sheriff in trespass, where he is declared against personally, by proof of a trespass committed by the deputy sheriff while levying an attachment.—MOORES v. WINTER, Ark., 53 S. W. Rep. 1057.

97. TRUST — Mortgages — Venue.—Where a contract contained a mortgage clause to secure its enforcement, and in an action on it no foreclosure was asked, and the document was introduced simply for the sake of the contract, and was not referred to in the judgment, the validity of the mortgage was not involved, and defendant was not entitled to have the cause removed to the county where the land was situated.—MAX v. HARRIS, N. Car., 34 S. E. Rep. 427.

98. TRUST AND TRUSTEE—Trust Funds — Conversion.—A trustee who deposits trust funds in a bank to his private account is, in the absence of special authority so to do, guilty of conversion.—DIRKS v. JUEL, Neb., 80 N. W. Rep. 1045.

99. WATER—Rights of Lot Owners — Nuisance.—The rule that the lower proprietor holds his land subject to the burden of receiving the surface water which naturally drains from the higher land applies to city lots as well as rural property.—CARLAND v. AUBIN, Tenn., 53 S. W. Rep. 940.

100. WATERS AND WATER COURSES—Water Companies—Regulations.—Where a public water company is a *quasi*-public corporation, and bound to supply all persons, without discrimination, such companies may nevertheless adopt reasonable rules for the furtherance of their business, which may be enforced, even to the extent of denying water to those who refuse to comply with them.—HARBISON v. KNOXVILLE WATER CO., Tenn., 53 S. W. Rep. 993.

101. WILLS—Construction—Estate Conveyed.—Where testator devised land to his grandchildren to own and be used for their advantage until they should become of age, and to be turned over to them to control and use as they saw fit, such devise conveyed the land in fee, and not an interest during minority only.—WOOTEN v. REED, Tenn., 53 S. W. Rep. 991.

102. WILLS—Contest — Evidence.—In a will contest, the contestants may prove entire conversations between deceased and the legatees, which tend to show undue influence and mental incapacity of the testator, and it is error to restrict such evidence to what the legatees said, and exclude what deceased said.—IN RE POTTER'S WILL, N. Y., 55 N. E. Rep. 387.

103. WILLS—Devise Over.—A testator devised all of his property to his daughter, with a devise over in case of her death without issue. His daughter did not survive him, dying in infancy, and, in a codicil subsequently executed, testator did not revoke the devise over, or provide otherwise for the disposition of his estate. Held, that the devise over did not become void by reason of the daughter's death.—IN RE MILLER'S WILL, N. Y., 55 N. E. Rep. 385.

104. WILLS — Revocation — Republication.—Under 2 Rev. St. ch. 6, tit. 1, § 53, providing that if, after the making of any will, the testator shall duly execute a second, the destruction, cancellation, or revocation of that will shall not revive the first, unless such was the intention of the testator, or unless, after such revocation, he shall duly republish his first will, a will revoked by a subsequent one which is destroyed by the testator is revived only by a republication with the same formalities as an original publication, required by section 40; and hence a declaration of the testator that he desires his first will to stand, made to others than the subscribing witnesses, who do not subscribe as witnesses to the will, is not a sufficient republication.—IN RE STICKNEY'S WILL, N. Y., 55 N. E. Rep. 396.

105. WILL—Revocation by Marriage.—A will executed by a single woman is revoked by her subsequent marriage, at least to the extent it would operate to exclude her husband from his right as tenant by curtesy in any lands of which she died seised in her own right of an estate of inheritance.—VANDEVEER v. HIGGINS, Neb., 80 N. W. Rep. 1043.

106. WILLS — Testamentary Character.—A paper wholly in the handwriting of L, and signed by him, reciting the facts as to the purchase of a tract of land, and reciting that "I have requested my executors to give a clear deed for the property after my death" to C and wife, is a valid will, devising to C and wife the property described.—WEBSTER v. LOWE, Ky., 53 S. W. Rep. 1030.